Civ3701 - Exam and past memo

Civil Procedure (University of South Africa)

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CIV3701 June/May 2024 Exam Created by Cynthia Charlotte 28 June 2024
Group A Exam Paper

1. Indicate the most accurate statement:

a. An action for divorce or an action for damages constitutes a claim for a debt or a liquidated demand.

b. When the combined summons is employed, serious factual disputes do not require the leading of oral evidence to resolve any issues.

c. The nature of the claim is the factor that determines whether a simple summons or a combined summons must be employed.

d. a declaration may be used in the case of a combined summons since both documents form a unit.

2. Indicate the most accurate statement:

a. A claim for the delivery of specific movable property without an alternative claim for damages, even though the claim does not exceed R200 000, cannot be instituted in any magistrates court because it is a claim for specific performance.

b. It was held in Badenhorst v Theophanous 1988 1 SA 793 (C) that magistrates courts may grant prohibitory interdicts, provided that such orders amount to orders ad factum praestandum in terms of a contractual obligation.

c. The magistrates court for the district of Pretoria is competent to exercise jurisdiction if the conclusion of the contract occurred in Pretoria and the contract was breached in the magisterial district of Johannesburg.

d. A plaintiff may claim two amounts, namely R90 000 and R180 000 in the same summons, even if the joint amount of the claims exceeds the district magistrates courts jurisdiction under section 29 of the Magistrates Courts Act 32 of 1944, provided that the parties are the same and provided that each claim is based on a separate cause of action.

3. Indicate the most accurate statement:

a. When it is said that a court exercises inherent jurisdiction, it means that the courts jurisdiction is derived from statute.

b. The South African civil procedural system is inquisitorial in nature.

c. In terms of the doctrine of effectiveness, a court will not exercise jurisdiction unless full compliance with the judgment is ensured.

d. The doctrine of effectiveness means that a court will be competent to exercise jurisdiction if compliance with the judgment can be expected.

4.Indicate the most accurate statement:

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a. Both appeal and review must take place within a reasonable time.

b. The single judge of the High Court whose judgment or order is being appealed against, may sit on the full bench at the hearing of the appeal.

c. Once an appeal has been noted, a plaintiff may not continue to execute a judgment given in his favour, unless authorised by the court.

d. The Supreme Court of Appeal is competent to hear appeals in respect of decisions or judgments handed down by the Competition Court.

5. Indicate the most accurate statement:

a. A juristic person is allowed to commence an action in the Small Claims Courts only when represented by a duly nominated director or other natural persons.

b. Matters that Small Claims Courts are absolutely not competent to adjudicate, are identical to those that the magistrates courts are not competent to hear in terms of the Magistrates Courts Act 32 of 1944.

c. An important objective of introducing Small Claims Courts is to increase ordinary citizens access to justice.

d. Small Claims Courts are limited to hearing only claims of up to R15 000, except where the parties consent in writing for the court to hear a claim in excess of R15 000.

6.Indicate the most accurate statement:

a. The formal documents used in application proceedings comprise pleadings and processes.

b. An interlocutory application is brought by way of a notice.

c. If a party wishes to oppose an application, he or she must deliver a notice of intention to defend within the dies induciae.

d. An ex parte application is brought when one party approaches the court in terms of Uniform Rule 35(7) for an order to compel the other party to discover particular documents.

7. Indicate the most accurate statement:

a. A juristic person is allowed to commence an action in the Small Claims Courts only when represented by a duly nominated director or other natural persons.

b. Matters that Small Claims Courts are absolutely not competent to adjudicate, are identical to those that the magistrates courts are not competent to hear in terms of the Magistrates Courts Act 32 of 1944.

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c. An important objective of introducing Small Claims Courts is to increase ordinary citizens access to justice.

d. Small Claims Courts are limited to hearing only claims of up to R15 000, except where the parties consent in writing for the court to hear a claim in excess of R15 000.

8.Indicate the most accurate statement:

① Leaving a copy of a summons at the defendant's place of employment does not fulfil the stated requirements for ordinary service as set out in the various rules of court.

② The main objective of the pre-trial conference in terms of both Uniform Rule 37 and magistrates courts rule 54 is to facilitate a settlement between the parties.

③ If a dispute arises over whether a summons was served on a particular party, such dispute can be resolved, by referring to the return of service of the sheriff.

④ One of the rules for the drafting of processes is that only facts, and not the law, must be pleaded.

9.Indicate the most accurate statement:

a. A judgment of a High Court which was procured by fraud may be set aside even if it is shown that the successful litigant was not a party to such fraud.

b. When judgment is granted against a litigant who is not physically present in court but is represented by a legal practitioner, the court is authorised in terms of section 36 of the Magistrates Court Act 32 of 1944 to thereafter vary or rescind the order by virtue of the fact that this litigant was absent for purposes of this section.

c. A magistrates court judgment becomes final and unalterable once it is pronounced by the magistrate, and can under no circumstance be varied or rescinded.

d. Uniform Rule 42 provides that any variation of judgment sought under this rule must be brought by way of the application procedure.

10. Indicate the most accurate statement:

a. The general rule is that a party who has closed his or her case may not present further evidence, save in rebuttal.

b. The authority of all courts of law in South Africa to grant judgments is derived from statutory law.

c. A case management judge may refuse to certify a case as trial-ready if parties failed to clearly set out the issues in dispute.

d. The express purpose of delivering a notice and summaries in respect of expert

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witnesses in terms of Uniform Rule 36(9) is to shorten the duration of the trial.

11. Indicate the most ACCURATE statement:

a. The Magistrates court are also referred to lower courts because of the low value matters.

b. The principle of party representation does not apply in the small claims court because the commissioner plays an active role in assisting the litigants to represent their case during the trial.

c. The Magistrates' court may pronounce on the validity of any law or of any conduct of the President of the Republic.

d. The Magistrates' courts rules are referred to as Uniform Rules of the court.

12. Indicate the most ACCURATE statement:

① Domicile is acquired by a lawful presence at a particular place with the intention of settling there for an indefinite period.

② Domicile is acquired by a lawful presence at a particular place with the intention of there for a definite period.

③ Domicile means an acquired presence at a given place for a specific period.

④ Domicile means a lawful presence at a place for a specific period.

13. Indicate the most accurate statement:

a. Pleadings cannot prevent future disputes between the parties regarding issues that have already been adjudicated upon.

b. Notice of intention to defend is a pleading.

c. The function of pleadings is to describe what parties are expected to answer in preparation for their cases and the evidence they intend leading in support of their own contentions and in rebuttal of their opponent.

d. Pleading stage is a written document exchanged between such parties containing averments by the parties to an action in which the material facts on which they rely in support of their claim or defence.

14. Indicate the most accurate statement:

a. Averments that are scandalous, vexatious or irrelevant may be strike out by way of summons since such averments relate to the pleading as a whole.

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b. An application to strike out is used to correct errors in pleadings.

c. Amendment of pleadings provides a speedy and inexpensive method of determining the issue, without having to embark on the lengthy and expensive procedure of a full trial.

d. Amendment of pleadings is employed to amplifies the cause of action and may also extend or limit the relief claimed.

15. Indicate the most accurate statement:

a. The defendant may raise a defence against the plaintiff's claim by employing a plea on the merits.

b. A plea on the merits does not raise any defence against the plaintiff's claim and therefore cannot deal with the merits of the plaintiff's case as set out in the plaintiff's particulars of claim or declaration.

c. The notice of intention to defend raises a defence against the plaintiff in a settlement of a dispute.

d. A replication will most likely be relevant in the case where a defendant replies to the plaintiff's plea.

16. Indicate the most accurate statement:

a. The Supreme Court of Appeal is competent to hear only non-Constitutional matters.

b. Dispute resolution in African customary law entails that disputes are settled by the headman or by family groups, with no recourse to the courts of law whatsoever.

c. Disputes concerning the constitutional status, powers, or functions between organs of state in the national or provincial spheres may be adjudicated by the Constitutional Court only.

d. A magistrates court is not competent to adjudicate upon the validity of any legislation but may pronounce upon the validity of the exercise of executive powers by the President.

17.The plaintiff, A, claims payment from B in the amount of R500 000 in terms of an agreement in respect of which the defendant, B, would be liable for such payment should Z fail to pay this amount. The plaintiff does not aver in the particulars of claim that Z failed to pay the amount. The defendant may respond to this defect in the pleading in the following manner. Indicate the most accurate statement:

a. The defendant may apply for the setting aside of the pleading as an irregular proceeding in terms of Uniform Rule 30.

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b. The defendant may deliver a special plea.

c. The defendant may raise an exception.

d. The defendant may apply for an amendment of the particulars of claim.

18. C and D enter into a contract in Durban in terms of which C has to deliver goods to Ds business premises in Pretoria.Despite demand, C fails to deliver the goods. C lives in Pietermaritzburg and D lives in Johannesburg. D intends issuing summons against C for delivery of the goods.Indicate the most accurate statement:

a. Only the magistrates' court of Johannesburg will have jurisdiction to hear the matter.

b. Only the magistrates' courts of Durban and Pietermaritzburg will have jurisdiction to hear the matter.

c. Only the magistrates courts of Durban, Pietermaritzburg and Pretoria will have jurisdiction to hear the matter.

d. Only the magistrates court of Pietermaritzburg will have jurisdiction to hear the matter.

19. Indicate the most ACCURATE statement:

a. The jurisdictional connecting factor ratione domicilii is relevant in respect of defendants who are citizens of South Africa.

b. A local peregrinus is a person who is neither domiciled nor resident within the Republic.

c. A person may have only one place of residence.

d. The jurisdictional connecting factor ratione domicilii is relevant in respect of defendants who are domiciled in South Africa.

20. Indicate the most accurate statement:

a. An offer to settle in terms of Uniform Rule 34 may be used in both summons and application proceedings.

b. A party wishing to demand security for costs from his or her opponent in the magistrates court may approach the clerk of the court or the registrar for an order directing the party to furnish such security.

c. In the magistrates court, a power of attorney must be filed with the registrar or clerk of the court as proof of mandate before a summons may be issued.

d. In reply to a defendant's counterclaim, a defendant in reconvention may file a replication in reconvention.

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21. Indicate the most accurate statement:

a. Because the conduct of litigation is so specialised, litigants normally instruct attorneys and advocates to conduct litigation on their behalf in all South African courts.

b. Whereas substantive law determines the rights and duties of individuals, adjective law provides the mechanism through which these rights and duties are enforced.

c. The trial in Anglo-American civil procedure is marked by its orality which applies to the parties, their counsel and witnesses only.

d. The principle that litigants have the competence to either commence or defend proceedings and to prosecute their respective cases, support their right to negotiate an out-of-court settlement.

22.A High Court may exercise jurisdiction ad fundandam iurisdictionem if:

a. The defendant is a peregrinus of the court concerned, but an incola of the Republic, provided that attachment has taken place.

b. The plaintiff is an incola of the court concerned and the defendant is a peregrinus of such court as well as of the Republic, in an instance where the cause of action did not arise within the area of jurisdiction of the court concerned, provided attachment has taken place.

c. Attachment has taken place in an instance where the defendant is a peregrinus of the court concerned and of the whole Republic, irrespective of whether the plaintiff is an incola or peregrinus of the court concerned, provided that the cause of action has arisen within the court's area of jurisdiction.

d. Both the plaintiff and the defendant are peregrini of the court concerned, and attachment has taken place.

23.Indicate the most accurate statement:

a. A notice of bar applies to a replication and subsequent pleadings, and failure to react to such notice will result in a party being automatically barred.

b. A party who fails to timeously deliver a declaration and who, despite having received a notice of bar persists in such failure, is in default as well as barred.

c. A defendant who fails to timeously deliver a notice of intention to defend must first be given a notice of bar before a plaintiff may request default judgment, provided the defendant ignores the notice of bar.

d. A party who fails to timeously deliver a notice of intention to defend, is automatically barred.

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24. Indicate the most ACCURATE statement:

a. Judgment or order of a particular court is enforceable within the area of that particular court's area.

b. A civil court process is issued by a particular court and may be served within that particular court's area.

c. A civil court process of a division runs within a particular court's area.

d. A civil court process of a division runs throughout the Republic.

25. X is a travelling salesman and only returns to his wife in Johannesburg over Easter and the Christmas period every year when he has time off from work. However, in between his travels in KwaZulu-Natal, he often spends time in his flat in Durban that he purchased for purposes of having a place where he could catch up on administrative work while there. For jurisdictional purposes. Indicate the most accurate statement:

a. X is resident in Johannesburg.

b. X is resident in both Durban and Johannesburg.

c. X is resident in every location where he is lawfully present.

d. If X is seconded to Cape Town by his company for a period of three months, X is resident in Cape Town for this period.

26. Indicate the most accurate statement:

a. Magistrates' Courts have the power to review the proceedings.

b. The grounds upon which a judgment will be set aside in terms of the common law are fraud, new documents, error and irregularities in procedure.

c. Superior courts do not have inherent jurisdiction to entertain all causes arising within their areas of jurisdiction.

d. Application procedure to be followed when variation of judgment is sought in terms of the common law.

27. Indicate the most accurate statement:

a. The court may interfere with civil proceedings during the pre-trial and trial stages at the request of either of the parties.

b. Every citizen is able to afford litigation because court time and court administration are paid for by the state.

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c. The objective of civil proceedings is to establish liability on a balance of probabilities, which means the court must be satisfied that the version put forward by the plaintiff is mostly true.

d. The state has an interest in civil proceedings since it provides the parties with court infrastructure and enforces the judgments of courts.

28. Indicate the most ACCURATE statement. Determine in which of the following statements a High Court would accept submission to its jurisdiction in regard to a claim sounding in money:

a. The defendant is a local peregrinus of the court concerned.

b. The plaintiff is an incola of the court concerned, the defendant is an incola of another South African court and the cause of action has occurred outside the court's area of jurisdiction.

c. Both parties to the action are incolae of the court concerned.

d. The plaintiff is a local peregrinus and the defendant is a foreign peregrinus, the cause of action has occurred within the court's area of jurisdiction.

29. During the trial it becomes clear that X concealed certain documents which were prejudicial to his case and lied about their existence. At the end of the trial Y's advocate argues that in these circumstances it would be appropriate for the court to make the following costs order. Indicate the most accurate statement:

a. Attorney-and-client costs against X.

b. Party-and-party costs against X.

c. That costs should be costs in the cause.

d. De bonis propriis against X.

30.Indicate the most accurate statement:

a. Uniform Rule 40 provides for a procedure whereby indigent persons may obtain free legal aid by approaching the Legal Aid Board.

b. Any dispute of fact is an indication that summons proceedings, and not application proceedings, must be used to commence court proceedings.

c. Substituted service of a summons upon a defendant may occur only if the court permits such service.

d. As dominus litis the plaintiff is responsible for placing a matter on the roll for hearing, and if he or she fails to do so, the defendant may approach the court for an order

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compelling him or her to do so.

31. Indicate the most ACCURATE statement:

a. The court, on review, will remit the matter when there are valid reasons why the court should exercise its discretion in favour of the applicant and substitute its own decision for that of the respondent.

b. The court, on review, will not remit the matter but rather request written reasons for judgment from the court that made a judgment.

c. The court, on review, will not remit the matter when a remittance will be futile.

d. The court, on review, will remit the matter when the end result is clear.

32. Indicate the statement that is the most ACCURATE statement:

a. An exception may only be pleaded to a declaration or particulars of claim.

b. An exception can be brought against any pleading.

c. An exception assumes the truth of all the allegations in the declaration.

d. A special plea alleges special facts unconnected with the merits of the action as a result of which the action is either destroyed or postponed.

33. Indicate the most ACCURATE statement:

a. The court, on review, will remit the matter when there are valid reasons why the court should exercise its discretion in favour of the applicant and substitute its own decision for that of the respondent.

b. The court, on review, will not remit the matter but rather request written reasons for judgment from the court that made a judgment.

c. The court, on review, will not remit the matter when a remittance will be futile.

d. The court, on review, will remit the matter when the end result is clear.

34. Indicate the most accurate statement:

a. The Roman-law rule actor sequitur forum rei means that the plaintiff must institute action against the defendant in the High Court within whose area of jurisdiction the defendant is a citizen.

b. A court would not accept a submission to its jurisdiction in regard to a claim sounding in money if the plaintiff is an incola of the court concerned and the defendant is an incola of another South African court, and the cause of action has occurred outside the

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court's area of jurisdiction.

c. On the basis of the ground ratione domicilii, a High Court may not exercise jurisdiction unless the defendant is physically present within its area of jurisdiction.

d. The ratione rei gestae applies when a court in whose area of jurisdiction property or a person is situated/resident, has exclusive jurisdiction over that property or person.

35. Indicate the most accurate statement:

a. A litigant who is dissatisfied with the outcome of a matter, always has one appeal as of right.

b. The Constitutional Court is the highest court of appeal in respect of all civil matters.

c. A court hearing an appeal from a lower court, as in the case of a court of first instance, consists of a single judge.

d. An appeal from a magistrates' court may only be noted against a decision which is final in effect.

36.Indicate the most accurate statement:

a. If a magistrate allowed inadmissible evidence, the proceedings may be reviewed, and in some cases may be appealed against.

b. The heads of argument, as the name suggests, simply consists of the advocate's main points of argument to be presented to court.

c. A party dissatisfied with the outcome of a matter in any High Court, may approach the Supreme Court of Appeal directly.

d. An appeal may be noted against interim orders because the granting of such orders means that the party against whom it was given, has lost the case.

37.Indicate the most accurate statement:

a. The onus of proof in civil proceedings rests on a balance of probabilities.

b. The objective of civil proceedings is to establish liability beyond reasonable doubt.

c. The burden of proof in civil proceedings is that no probable conclusion can be reached.

d. The burned of proof in civil proceedings is beyond all reasonable doubt.

38.Indicate the most accurate statement:

a. The purpose of an application for summary judgment is to obtain judgment speedily

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against the defendant whose defence against the plaintiff's claim does not raise any issue for trial.

b. The plaintiff may apply for summary judgment, before the defendant delivers a plea on the merits.

c. Application for summary judgment is restricted to the delivery of specified movable property only.

d. Summary judgment procedure is not an extraordinary procedure.

39. Indicate the most accurate statement:

a. In civil proceedings, the parties comprise the complainant and the defendant.

b. As in the case of a superior court, a magistrates court has discretion regarding its own procedure.

c. In civil proceedings, judgment will be granted in favour of the plaintiff if the defence raised by the defendant is less probable than the claim proved by the plaintiff.

d. When a claim for damages is instituted, the plaintiff must prove the guilt of the defendant.

40. Indicate the most accurate statement:

a. Section 31 of the Magistrates Courts Act 32 of 1944 provides that an interdict prohibiting the removal of furniture or other effects from the leased premises only becomes effective after application is made to court in this regard.

b. A magistrates court would be competent to exercise jurisdiction if the cause of action did not wholly occur within its district, but there is compliance with the provisions of sections 29 and 46, and the defendant raises no objection.

c. A magistrates court may exercise jurisdiction if the plaintiff resides, carries on business or is employed in its area of jurisdiction.

d. A magistrates court may exercise jurisdiction over the person of a defendant if the defendant is domiciled in its area of jurisdiction.

41. Indicate the most accurate statement:

a. Y delivers a plea on the merits because she wishes to give notice that she intends defending the action.

b. X is of the opinion that Y's plea on the merits does not sustain a defence, and therefore he objects to Y's plea by raising an exception.

c. X is of the opinion that Y does not have a bona fide defence and that she has entered an appearance simply to delay the action. Consequently, X applies for summary

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judgment.

d. X avers in the particulars of claim that breach of contract occurred on 1 March 1917, instead of on 1 March 2017. Y notices the error and applies for the amendment of the particulars of claim.

42. Peter and Don are involved in a motor collision due to Don driving through a red traffic light under the influence of alcohol. Peter sustains damages to his car, as well as personal injuries. Peter alleges that his damages are due solely to Don's negligence. Indicate the most accurate statement:

a. If Don is acquitted in the criminal proceedings, this means that Peter has a minimal chance of success if he later institutes civil proceedings.

b. Peter is compelled to lay criminal charges against Don.

c. In the civil proceedings between Peter and Don the court may not interfere in the manner in which they conduct the proceedings.

d. Peter is compelled by the state to institute civil proceedings against Don.

43. A High Court may exercise jurisdiction on the basis of an order for. Indicate the most accurate statement:

a. Attachment ad confirmandam iurisdictionem if the defendant is a peregrinus of the court concerned, the plaintiff is an incola of the court concerned, the cause of action occurred within the area of jurisdiction of the court concerned, and attachment has taken place.

b. Attachment ad confirmandam iurisdictionem if the defendant is a peregrinus of the court concerned as well as of the Republic, attachment has taken place and the cause of action occurred within the area of jurisdiction of the court concerned.

c. Attachment ad fundandam iurisdictionem if the plaintiff is a peregrinus of the court concerned, the defendant is a peregrinus of the whole Republic, the cause of action took place within the area of jurisdiction of the court and attachment has taken place.

d. Attachment ad fundandam iurisdictionem if the defendant is a peregrinus of the Republic, the cause of action took place outside the jurisdiction area of the court concerned, the plaintiff is an incola of another court and attachment has taken place.

44. X issues summons against Y for damages in the amount of R700 000 for defamation. The nature of the claim that X has against Y is. Indicate the most accurate statement:

a. An illiquid claim.

b. A liquidated claim.

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c. An unliquidated claim.

d. A liquid claim.

45. Indicate the most accurate statement:

a. In accordance with the audi alteram partem maxim, and in order to notify defendants of proceedings instituted against them, notices of motion and summonses must be served on the defendants personally.

b. The rules of court allow only three sets of affidavits to be exchanged between the parties in opposed application proceedings.

c. The commencement of action proceedings must always be preceded by a letter of demand.

d. If the plaintiff's claim is based on a duly executed acknowledgement of debt, the action may be instituted by way of the provisional sentence summons.

46. Indicate the most accurate statement. Application proceedings may be instituted by:

a. Only the ex parte application.

b. Either the ex parte application, the ordinary application, or the urgent application.

c. Only the ordinary application.

d. Either the ex parte application or the ordinary application.

47.Indicate the most ACCURATE:

a. The Constitutional Court need not confirm a decision regarding the constitutionality of any legislation by a High Court before such decision can acquire force.

b. Although the Supreme Court of Appeal may hear appeals in respect of both constitutional and non-constitutional matters, it is not the final court of appeal in the case of constitutional matters.

c. A High Court may hear any matter that is not prohibited from hearing by the Constitution or an act of Parliament.

d. The Constitutional Court cannot be approached directly, even in exceptional circumstances.

48. Indicate the most accurate statement:

a. The main source of the professional code of conduct of legal practitioners is the Legal Practice Act, 2014 and the Regulations promulgated thereunder.

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b. All superior courts function as either a court of first instance, or as a court of appeal.

c. Because a small claims court is not a court of record, a matter cannot be taken on review.

d. Dispute resolution mechanisms in African customary law are influenced by Western traditions, and that can be seen from their use of the processes of arbitration and mediation.

49. Indicate the most accurate statement:

a. An exception may only be raised against a declaration or particulars of claim.

b. Orders ad factum praestandum are orders in terms of which the debtor is ordered to perform a certain action, namely the payment of money.

c. Striking out is a procedure available to parties in both application and action proceedings.

d. A judgment can only be delivered at the end of a trial because the court is only competent to deliver a judgment after hearing and properly considering the evidence.

50. Section 2(1) of the Divorce Act of 1979 read with section 1(1) of the Domicile Act of 1992 provides that a court may exercise divorce jurisdiction on the following grounds:

a. If both or either of the spouses are/is domiciled in the area of jurisdiction of a High Court on the date on which the action is instituted.

b. If both or either of the spouses are/is ordinarily resident in the area of jurisdiction of a High Court and in the Republic on the date on which the action is instituted, for one year immediately prior to the date of the marriage.

c. Only if the wife is resident in the same High Court where her husband is resident.

d. Only if the wife is domiciled and resident within the area of jurisdiction of a High Court at the time of the institution of the action.

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UNIVERSITY EXAMINATIONS

UNIVERSITEITSEKSAMENS

UNISA university of south africa

CIV3701

May/June 2020

Civil Procedure

Duration : 2 Hours

100 Marks

EXAMINERS :

FIRST : MS MP MOTHAPO ADV MB NDLAZI

SECOND : PROF E HURTER

This paper consists of 21 pages.

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INTRODUCTORY STUDIES

QUESTION 1

Indicate the most accurate statement:

(1) When a claim for damages is instituted, the plaintiff must prove the guilt of the defendant.

(2) In civil proceedings, the parties comprise the complainant and the defendant.

(3) In civil proceedings, judgment will be granted in favour of the plaintiff if the defence raised by the defendant is less probable than the claim proved by the plaintiff.

(4) As in the case of a superior court, a magistrates' court has discretion regarding its own procedure. (2)

QUESTION 2

Peter and Don are involved in a motor collision due to Don driving through a red traffic light under the influence of alcohol. Peter sustains damages to his car, as well as personal injuries. Peter alleges that his damages are due solely to Don's negligence.

Indicate the most accurate statement:

(1) Peter is compelled by the state to institute civil proceedings against Don.

(2) Peter is compelled to lay criminal charges against Don.

(3) In the civil proceedings between Peter and Don the court may not interfere in the manner in which they conduct the proceedings.

(4) If Don is acquitted in the criminal proceedings, this means that Peter has a minimal chance of success if he later institutes civil proceedings. (2)

QUESTION 3

Indicate the most accurate statement:

(1) Traditional dispute resolution processes are grouped together under the ADR system of dispute resolution because of their shared characteristics.

(2) When we refer to the reform of civil procedural law, we are in fact referring to the need to effect certain proposed cosmetic changes.

(3) Mediation is an Alternative Dispute Resolution (ADR) process, and the mediator, like a judicial officer, adjudicates disputes, but in an informal setting.

(4) Court-annexed mediation has increased access to justice by allowing a magistrate or a judge to suspend a matter brought before him or her if the matter is deemed suitable for mediation, and to proceed to mediate the matter in an attempt to help the parties reach a settlement. (2)

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QUESTION 4

Indicate the most accurate statement:

(1) The South African Superior Courts are creatures of statute because they are subject to the provisions of the Superior Courts Act, 2013.

(2) Small Claims Courts have an inferior status because they are not courts of record.

(3) In the Anglo-American system of civil procedure the judge is always passive during the pre-trial stage of the proceedings.

(4) All South African civil courts adhere to the adversarial system of civil litigation. (2)

QUESTION 5

Indicate the most accurate statement:

(1) The court may interfere with civil proceedings during the pre-trial and trial stages at the request of either of the parties.

(2) The state has an interest in civil proceedings since it provides the parties with court infrastructure and enforces the judgments of courts.

(3) Every citizen is able to afford litigation because court time and court administration are paid for by the state.

(4) The objective of civil proceedings is to establish liability on a balance of probabilities, which means the court must be satisfied that the version put forward by the plaintiff is mostly true. (2)

QUESTION 6

Indicate the most accurate statement:

(1) A juristic person is allowed to commence an action in the Small Claims Courts only when represented by a duly nominated director or other natural persons.

(2) An important objective of introducing Small Claims Courts is to increase ordinary citizens' access to justice.

(3) Small Claims Courts are limited to hearing only claims of up to R15 000, except where the parties consent in writing for the court to hear a claim in excess of R15 000.

(4) Matters that Small Claims Courts are absolutely not competent to adjudicate, are identical to those that the magistrates' courts are not competent to hear in terms of the Magistrates' Courts Act 32 of 1944. (2)

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QUESTION 7

Indicate the most accurate statement:

(1) As in the case of a small claims court, a magistrates' court has a discretion in regard to its own procedure.

(2) The Uniform Rules of Court are a common set of rules that uniformly regulate the conduct of proceedings in the magistrates' courts.

(3) The Minister of Justice and the Rules Board may make rules relating to the manner in which the Constitutional Court may be engaged.

(4) Since the rules exist for the courts, a High Court may condone a litigant's non-compliance with its rules. (2)

QUESTION 8

Indicate the most accurate statement:

(1) Dispute resolution in African customary law entails that disputes are settled by the headman or by family groups, with no recourse to the courts of law whatsoever.

(2) Disputes concerning the constitutional status, powers or functions between organs of state in the national or provincial spheres may be adjudicated by the Constitutional Court only.

(3) A magistrates' court is not competent to adjudicate upon the validity of any legislation, but may pronounce upon the validity of the exercise of executive powers by the President.

(4) The Supreme Court of Appeal is competent to hear only non-Constitutional matters. (2)

QUESTION 9

Indicate the most accurate statement:

(1) Arrest or attachment either *ad fundandam iurisdictionem* or *ad confirmandam iurisdictionem* apply only in respect of a defendant who is a *peregrinus* of the whole of the Republic.

(2) Section 8 of the Constitution provides that Chapter 2 (Bill of Rights) applies to "all law". Within the context of the law of civil procedure this means that the Constitution impacts legislation pertaining to courts, but not the rules of court.

(3) In the structure of the South African court system, the Constitutional Court can be described as the "apex court".

(4) The effect of the Constitutional Court ruling in *Gundwana v Steko Development and others* 2011 3 SA 608 (CC) and subsequent decisions (protecting the right to adequate housing) is that a judgment debtor's immovable property, if it is the debtor's primary residence, cannot be declared specially executable. (2)

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QUESTION 10

Indicate the most accurate statement:

(1) Because a small claims court is not a court of record, a matter cannot be taken on review.

(2) The main source of the professional code of conduct of legal practitioners is the Legal Practice Act, 2014 and the Regulations promulgated thereunder.

(3) All superior courts function as either a court of first instance, or as a court of appeal.

(4) Dispute resolution mechanisms in African customary law are influenced by Western traditions, and that can be seen from their use of the processes of arbitration and mediation. (2)

QUESTION 11

Indicate the most accurate statement:

(1) Whereas substantive law determines the rights and duties of individuals, adjective law provides the mechanism through which these rights and duties are enforced.

(2) The principle that litigants have the competence to either commence or defend proceedings and to prosecute their respective cases, support their right to negotiate an out-of-court settlement.

(3) The trial in Anglo-American civil procedure is marked by its orality which applies to the parties, their counsel and witnesses only.

(4) Because the conduct of litigation is so specialised, litigants normally instruct attorneys and advocates to conduct litigation on their behalf in all South African courts. (2)

JURISDICTION

QUESTION 12

Indicate the most accurate statement:

(1) An *incola* of a particular High Court is someone who is domiciled or resident in that court's area of jurisdiction, and who is also a South African citizen.

(2) The *forum rei sitae* will exercise jurisdiction over immovable property only following the attachment thereof.

(3) On the basis of the *actor sequitur forum rei* rule, a High Court will never exercise jurisdiction unless the defendant is domiciled or resident within its area of jurisdiction.

(4) An application for attachment must be brought before the main action commences, and the applicant must show that, *prima facie*, he or she has a cause of action. (2)

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QUESTION 13

A High Court may exercise jurisdiction *ad fundandam iurisdictionem* if --

Indicate the most accurate statement:

(1) both the plaintiff and the defendant are *peregrini* of the court concerned, and attachment has taken place

(2) the defendant is a *peregrinus* of the court concerned, but an *incola* of the Republic, provided that attachment has taken place

(3) attachment has taken place in an instance where the defendant is a *peregrinus* of the court concerned and of the whole Republic, irrespective of whether the plaintiff is an *incola* or *peregrinus* of the court concerned, provided that the cause of action has arisen within the court's area of jurisdiction

(4) the plaintiff is an *incola* of the court concerned and the defendant is a *peregrinus* of such court as well as of the Republic, in an instance where the cause of action did not arise within the area of jurisdiction of the court concerned, provided attachment has taken place. (2)

QUESTION 14

A High Court may exercise jurisdiction on the basis of an order for –

Indicate the most accurate statement:

(1) attachment *ad confirmandam iurisdictionem* if the defendant is a *peregrinus* of the court concerned, the plaintiff is an *incola* of the court concerned, the cause of action occurred within the area of jurisdiction of the court concerned, and attachment has taken place.

(2) attachment *ad confirmandam iurisdictionem* if the defendant is a *peregrinus* of the court concerned as well as of the Republic, attachment has taken place and the cause of action occurred within the area of jurisdiction of the court concerned.

(3) attachment *ad fundandam iurisdictionem* if the plaintiff is a *peregrinus* of the court concerned, the defendant is a *peregrinus* of the whole Republic, the cause of action took place within the area of jurisdiction of the court and attachment has taken place.

(4) attachment *ad fundandam iurisdictionem* if the defendant is a *peregrinus* of the Republic, the cause of action took place outside the jurisdiction area of the court concerned, the plaintiff is an *incola* of another court and attachment has taken place. (2)

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QUESTION 15

Indicate the most accurate statement:

Section 2(1) of the Divorce Act of 1979 read with section 1(1) of the Domicile Act of 1992 provides that a court may exercise divorce jurisdiction on the following grounds:

(1) Only if the wife is resident in the same High Court where her husband is resident.

(2) Only if the wife is domiciled and resident within the area of jurisdiction of a High Court at the time of the institution of the action.

(3) If both or either of the spouses are/is domiciled in the area of jurisdiction of a High Court on the date on which the action is instituted.

(4) If both or either of the spouses are/is ordinarily resident in the area of jurisdiction of a High Court and in the Republic on the date on which the action is instituted, for one year immediately prior to the date of the marriage. (2)

QUESTION 16

Indicate the most accurate statement:

(1) The Roman-law rule *actor sequitur forum rei* means that the plaintiff must institute action against the defendant in the High Court within whose area of jurisdiction the defendant is a citizen.

(2) The *ratione rei gestae* applies when a court in whose area of jurisdiction property or a person is situated/resident, has exclusive jurisdiction over that property or person.

(3) A court would not accept a submission to its jurisdiction in regard to a claim sounding in money if the plaintiff is an *incola* of the court concerned and the defendant is an *incola* of another South African court, and the cause of action has occurred outside the court's area of jurisdiction.

(4) On the basis of the ground *ratione domicilii*, a High Court may not exercise jurisdiction unless the defendant is physically present within its area of jurisdiction. (2)

QUESTION 17

Indicate the most accurate statement:

(1) When it is said that a court exercises "inherent" jurisdiction, it means that the court's jurisdiction is derived from statute.

(2) The South African civil procedural system is inquisitorial in nature.

(3) In terms of the doctrine of effectiveness, a court will not exercise jurisdiction unless full compliance with the judgment is ensured.

(4) The doctrine of effectiveness means that a court will be competent to exercise jurisdiction if compliance with the judgment can be expected. (2)

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QUESTION 18

Indicate the most accurate statement:

(1) A High Court will be able to hear a contractual claim regardless of whether the contract was entered into or was breached within the particular court's area of jurisdiction.

(2) Despite the defendant being resident within the Johannesburg High Court's area of jurisdiction, this court will not have jurisdiction in respect of a claim for the delivery of a motor vehicle where the motor vehicle is situated within the jurisdiction area of the Pretoria High Court.

(3) The jurisdictional connecting factor *ratione rei sitae* is relevant only in respect of claims sounding in money.

(4) The domicile of a person who has been sentenced to ten years' imprisonment changes from that of his home address to that of the correctional facility upon entering the facility. (2)

QUESTION 19

X is a travelling salesman and only returns to his wife in Johannesburg over Easter and the Christmas period every year when he has time off from work. However, in between his travels in KwaZulu-Natal, he often spends time in his flat in Durban that he purchased for purposes of having a place where he could catch up on administrative work while there.

For jurisdictional purposes --

Indicate the most accurate statement:

(1) X is resident in both Durban and Johannesburg.

(2) X is resident in Johannesburg.

(3) X is resident in every location where he is lawfully present.

(4) If X is seconded to Cape Town by his company for a period of three months, X is resident in Cape Town for this period. (2)

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QUESTION 20

Ben lives in Johannesburg, but also owns a farm outside Port Elizabeth. Sam lives in Pretoria. Ben sells his farm to Sam for R2 million (two million rand). Sam pays the purchase price, but Ben fails to sign the transfer documents.

Indicate the most accurate statement:

(1) Sam may institute action against Ben in the Johannesburg High Court, asking the court to determine the title to the property.

(2) Sam may institute action in the High Court of Pretoria for an order for the transfer of the farm.

(3) If a tractor, instead of a farm had been sold, the Johannesburg High Court and the Pretoria High Court will be able to hear an action for the determination of ownership.

(4) If a tractor, instead of a farm had been sold, both the Johannesburg High Court and the Port Elizabeth High Court may be able to hear an action for the determination of ownership. (2)

QUESTION 21

Indicate the most accurate statement:

(1) A court may exercise divorce jurisdiction only if both or either of the parties are/is domiciled in the Republic on the date on which the action is instituted.

(2) A court may exercise divorce jurisdiction only if both or either of the parties are/is resident in its area of jurisdiction on the date on which the action is instituted and has/have been ordinarily resident in the Republic for a period of not less than one year immediately prior to the institution of the action.

(3) A court may exercise divorce jurisdiction if both or either of the parties are/is ordinarily resident in its area of jurisdiction on the date on which the action is instituted and has/have been ordinarily resident in the Republic for a period of not less than one year immediately prior to the institution of the action.

(4) A court may exercise divorce jurisdiction if both or either of the parties are/is domiciled in the Republic on the date on which the action is instituted and the parties are/is resident in its area of jurisdiction on the date on which the action is instituted and has/have been ordinarily resident in the Republic for a period of less than one year immediately prior to the institution of the marriage. (2)

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QUESTION 22

Indicate the most accurate statement:

Determine in which one of the following situations a High Court will be competent to exercise jurisdiction.

(1) The plaintiff is an *incola* of the court in which the cause of action arose and the defendant is an *incola* of the Republic.

(2) Both parties to the action are *peregrini* in which the cause of action arose outside the court's jurisdictional area. The defendant submits to the jurisdiction of this court.

(3) A spouse who is domiciled in the United Kingdom may not independently institute proceedings in a South African High Court in which the other spouse is domiciled.

(4) In claims relating to property, the *forum rei sitae* has exclusive jurisdiction, which means it will always have jurisdiction regardless of the nature of the property. (2)

QUESTION 23

Indicate the most accurate statement:

(1) A magistrates' court may exercise jurisdiction over the person of a defendant if the defendant is domiciled in its area of jurisdiction.

(2) A magistrates' court may exercise jurisdiction if the plaintiff resides, carries on business or is employed in its area of jurisdiction.

(3) A magistrates' court would be competent to exercise jurisdiction if the cause of action did not wholly occur within its district, but there is compliance with the provisions of sections 29 and 46, and the defendant raises no objection.

(4) Section 31 of the Magistrates' Courts Act 32 of 1944 provides that an interdict prohibiting the removal of furniture or other effects from the leased premises only becomes effective after application is made to court in this regard. (2)

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QUESTION 24

Indicate the most accurate statement:

(1) The magistrates' court for the district of Pretoria is competent to exercise jurisdiction if the conclusion of the contract occurred in Pretoria and the contract was breached in the magisterial district of Johannesburg.

(2) A claim for the delivery of specific movable property without an alternative claim for damages, even though the claim does not exceed R200 000, cannot be instituted in any magistrates' court because it is a claim for specific performance.

(3) A plaintiff may claim two amounts, namely R90 000 and R180 000 in the same summons, even if the joint amount of the claims exceeds the district magistrates' courts' jurisdiction under section 29 of the Magistrates' Courts Act 32 of 1944, provided that the parties are the same and provided that each claim is based on a separate cause of action.

(4) It was held in *Badenhorst v Theophanous* 1988 1 SA 793 (C) that magistrates' courts may grant prohibitory interdicts, provided that such orders amount to "orders *ad factum praestandum* in terms of a contractual obligation". (2)

QUESTION 25

X has a claim against B for damages in the amount of R420 000. However, X owes B R30 000 as payment for goods which B has sold and delivered to him.

Indicate the most accurate statement:

(1) If X deducts R30 000 from his claim in terms of section 39 of the Magistrates' Courts Act 32 of 1944, and thereupon succeeds in proving that B is liable for R390 000, the court will award R390 000 as damages.

(2) If X abandons R30 000 from his claim in terms of section 38 of the Magistrates' Courts Act 32 of 1944, and thereupon succeeds in proving that B is liable for R390 000, the court will award R390 000 as damages.

(3) If X does not rely on section 38 or 39 of the Magistrates' Courts Act 32 of 1944, there is no other way in which he will be able to bring this action within the jurisdiction of the magistrates' court.

(4) X is entitled to claim R400 000 from B and thereafter institute an action for the balance of his claim, namely R20 000. (2)

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QUESTION 26

C and D enter into a contract in Durban in terms of which C has to deliver goods to D's business premises in Pretoria. Despite demand, C fails to deliver the goods. C lives in Pietermaritzburg and D lives in Johannesburg. D intends issuing summons against C for delivery of the goods.

Indicate the most accurate statement:

(1) Only the magistrates' court of Johannesburg will have jurisdiction to hear the matter.

(2) Only the magistrates' courts of Durban and Pietermaritzburg will have jurisdiction to hear the matter.

(3) Only the magistrates' courts of Durban, Pietermaritzburg and Pretoria will have jurisdiction to hear the matter.

(4) Only the magistrates' court of Pietermaritzburg will have jurisdiction to hear the matter. (2)

QUESTION 27

Indicate the most accurate statement:

(1) The district magistrates' courts may hear divorce matters in terms of the Jurisdiction of the Regional Magistrates' Courts Amendment Act, 2013.

(2) Unlike the High Court, the magistrates' court may exercise divorce jurisdiction only if the wife is resident within the jurisdictional area of the court concerned and the husband is resident outside the Republic.

(3) Section 28(1A) of the Magistrates' Courts Act confers divorce jurisdiction on the regional magistrates' courts.

(4) A magistrates' court may exercise divorce jurisdiction and may determine actions relating to the nullity of a marriage, but may not dissolve customary marriages. (2)

QUESTION 28

While attending an outdoor expo in Johannesburg, P enters into a contract with Q in terms of which Q is to build a barbecue for P's home in Polokwane. P pays Q an amount of R280 000 for building the barbecue, but Q fails to build the barbecue. P is a resident of Polokwane and wishes to institute court proceedings against Q for damages suffered due to this failure in the amount of R280 000. Q is a resident of Pretoria.

The following magistrate's courts will have jurisdiction to hear the action instituted by P.

Indicate the statement the most accurate statement:

(1) Only the district magistrates' courts of Johannesburg and Pretoria.

(2) Only the regional magistrate' courts of Pretoria and Johannesburg.

(3) Only the district magistrates' court of Pretoria.

(4) Only the regional magistrates' court of Pretoria. (2)

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PROCEDURE

QUESTION 29

Indicate the most accurate statement:

Application proceedings may be instituted by

(1) only the *ex parte* application

(2) only the ordinary application

(3) either the *ex parte* application or the ordinary application

(4) either the *ex parte* application, the ordinary application, or the urgent application. (2)

QUESTION 30

Indicate the most accurate statement:

(1) An interlocutory application is brought by way of a notice.

(2) If a party wishes to oppose an application, he or she must deliver a notice of intention to defend within the *dies induciae*.

(3) An *ex parte* application is brought when one party approaches the court in terms of Uniform Rule 35(7) for an order to compel the other party to discover particular documents.

(4) The formal documents used in application proceedings comprise pleadings and processes. (2)

QUESTION 31

Indicate the most accurate statement:

(1) The rules of court allow only three sets of affidavits to be exchanged between the parties in opposed application proceedings.

(2) If the plaintiff's claim is based on a duly executed acknowledgement of debt, the action may be instituted by way of the provisional sentence summons.

(3) The commencement of action proceedings must always be preceded by a letter of demand.

(4) In accordance with the *audi alteram partem* maxim, and in order to notify defendants of proceedings instituted against them, notices of motion and summonses must be served on the defendants personally. (2)

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QUESTION 32

X issues summons against Y for damages in the amount of R700 000 for defamation. The nature of the claim that X has against Y is—

Indicate the most accurate statement:

(1) a liquidated claim

(2) an illiquid claim

(3) an unliquidated claim

(4) a liquid claim. (2)

QUESTION 33

Indicate the most accurate statement:

(1) A party who fails to timeously deliver a notice of intention to defend, is automatically barred.

(2) A party who fails to timeously deliver a declaration and who, despite having received a notice of bar persists in such failure, is in default as well as barred.

(3) A notice of bar applies to a replication and subsequent pleadings, and failure to react to such notice will result in a party being automatically barred.

(4) A defendant who fails to timeously deliver a notice of intention to defend must first be given a notice of bar before a plaintiff may request default judgment, provided the defendant ignores the notice of bar. (2)

QUESTION 34

Indicate the most accurate statement:

(1) X avers in the particulars of claim that breach of contract occurred on 1 March 1917, instead of on 1 March 2017. Y notices the error and applies for the amendment of the particulars of claim.

(2) Y delivers a plea on the merits because she wishes to give notice that she intends defending the action.

(3) X is of the opinion that Y does not have a *bona fide* defence and that she has entered an appearance simply to delay the action. Consequently, X applies for summary judgment.

(4) X is of the opinion that Y's plea on the merits does not sustain a defence, and therefore he objects to Y's plea by raising an exception. (2)

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QUESTION 35

Indicate the most accurate statement:

(1) In terms of Rule 35 of the Uniform Rules of Court, a party may lawfully refuse to disclose correspondence exchanged "without prejudice".

(2) It is an accepted rule that an offer to settle in terms of Uniform Rule 34 and a tender in terms of the common law may not be disclosed in court before judgment has been given.

(3) An interlocutory application is brought by way of a notice of motion.

(4) The amendment procedure is used only to correct **errors** in pleadings, and may not, for instance, be used to extend the relief claimed. (2)

QUESTION 36

The plaintiff, A, claims payment from B in the amount of R500 000 in terms of an agreement in respect of which the defendant, B, would be liable for such payment should Z fail to pay this amount. The plaintiff does not aver in the particulars of claim that Z failed to pay the amount. The defendant may respond to this defect in the pleading in the following manner:

Indicate the most accurate statement:

(1) the defendant may apply for the setting aside of the pleading as an irregular proceeding in terms of Uniform Rule 30

(2) the defendant may raise an exception

(3) the defendant may deliver a special plea

(4) the defendant may apply for an amendment of the particulars of claim. (2)

QUESTION 37

Indicate the most accurate statement:

(1) Although the general rule is that evidence must be given *viva voce* and in open court, the court may, for sufficient reasons, order that evidence be given on affidavit.

(2) A notice of intention to defend is the first of the pleadings that are exchanged between litigating parties.

(3) Passengers of a minibus suffer damage in that their personal possessions are either damaged or destroyed in a collision. Because actions for damages tend to be of a protracted nature and most passengers involved suffer financial hardship while the action drags on, the passengers may, in terms of Uniform Rule 34A apply to court for interim payment.

(4) If a plaintiff issues two summonses against the same defendant on the same cause of action in two different courts, the defendant may approach the court to have the more recent summons struck out on the ground that such summons is vexatious. (2)

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QUESTION 38

Indicate the most accurate statement:

Summary judgment is relevant in the following circumstances:

(1) where the claim is for damages and the defendant gives a notice of intention to defend simply to delay proceedings

(2) where the claim is for goods sold and delivered and the defendant's plea on the merits does not raise any issue for trial

(3) where the claim is for specific performance and the defendant does not have a *bona fide* defence

(4) where the claim is for the delivery of ten specially marked cows and the defendant fails to timeously deliver a notice of intention to defend. (2)

QUESTION 39

Indicate the most accurate statement:

(1) Orders *ad factum praestandum* are orders in terms of which the debtor is ordered to perform a certain action, namely the payment of money.

(2) An exception may only be raised against a declaration or particulars of claim.

(3) Striking out is a procedure available to parties in both application and action proceedings.

(4) A judgment can only be delivered at the end of a trial, because the court is only competent to deliver a judgment after hearing and properly considering the evidence. (2)

QUESTION 40

Indicate the most accurate statement.

(1) As *dominus litis* the plaintiff is responsible for placing a matter on the roll for hearing, and if he or she fails to do so, the defendant may approach the court for an order compelling him or her to do so.

(2) Uniform Rule 40 provides for a procedure whereby indigent persons may obtain free legal aid by approaching the Legal Aid Board.

(3) Any dispute of fact is an indication that summons proceedings, and not application proceedings, must be used to commence court proceedings.

(4) Substituted service of a summons upon a defendant may occur only if the court permits such service. (2)

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QUESTION 41

Indicate the most accurate statement:

(1) A case management judge may refuse to certify a case as trial-ready if parties failed to clearly set out the issues in dispute.

(2) The express purpose of delivering a notice and summaries in respect of expert witnesses in terms of Uniform Rule 36(9) is to shorten the duration of the trial.

(3) The authority of all courts of law in South Africa to grant judgments is derived from statutory law.

(4) The general rule is that a party who has closed his or her case may not present further evidence, save in rebuttal. (2)

QUESTION 42

Indicate the most accurate statement:

(1) In the magistrates' courts a plaintiff's summons must contain a reference to section 26(1) of the Constitution in instances where he or she seeks an order for movable property to be declared executable.

(2) The automatic rent interdict is a unique type of summons used in the magistrates' courts and is called so because it offers a speedy procedure to landlords suing for outstanding rental payments.

(3) The magistrates' court is competent to decide to subpoena a person as a witness if the court is of the opinion that such a witness would be able to contribute towards settling the dispute.

(4) The effect of an order for absolution of the instance is that the parties are placed in the same position as if the case had never been brought. (2)

QUESTION 43

During the trial it becomes clear that X concealed certain documents which were prejudicial to his case, and lied about their existence. At the end of the trial Y's advocate argues that in these circumstances it would be appropriate for the court to make the following costs order –

Indicate the most accurate statement:

(1) *de bonis propriis* against X

(2) party-and-party costs against X

(3) attorney-and-client costs against X

(4) that costs should be costs in the cause. (2)

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QUESTION 44

Indicate the most accurate statement:

(1) Leaving a copy of a summons at the defendant's place of employment does not fulfil the stated requirements for ordinary service as set out in the various rules of court.

(2) If a dispute arises over whether a summons was served on a particular party, such dispute can be resolved, by referring to the return of service of the sheriff.

(3) The main objective of the pre-trial conference in terms of both Uniform Rule 37 and magistrates' courts rule 54 is to facilitate a settlement between the parties.

(4) One of the rules for the drafting of processes is that only facts, and not the law, must be pleaded. (2)

QUESTION 45

Indicate the most accurate statement:

(1) An offer to settle in terms of Uniform Rule 34 may be used in both summons and application proceedings.

(2) In the magistrates' court, a power of attorney must be filed with the registrar or clerk of the court as proof of mandate before a summons may be issued.

(3) In reply to a defendant's counterclaim, a defendant in reconvention may file a replication in reconvention.

(4) A party wishing to demand security for costs from his or her opponent in the magistrates' court may approach the clerk of the court or the registrar for an order directing the party to furnish such security. (2)

APPEAL, REVIEW AND VARIATION OF JUDGMENT

QUESTION 46

Indicate the most accurate statement:

(1) The proceedings of all courts and quasi-judicial bodies are subject to review.

(2) If review proceedings are successful, the High Court which reviewed the proceedings will always refer the matter back to the particular body for a decision according to the correct procedure.

(3) Both appeals and review proceedings are commenced by way of notice of motion.

(4) Parties are restricted to the record of the proceedings complained about during review, and may thus not go beyond it. (2)

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QUESTION 47

Indicate the most accurate statement:

(1) A litigant who is dissatisfied with the outcome of a matter, always has one appeal as of right.

(2) A court hearing an appeal from a lower court, as in the case of a court of first instance, consists of a single judge.

(3) An appeal from a magistrates' court may only be noted against a decision which is final in effect.

(4) The Constitutional Court is the highest court of appeal in respect of all civil matters. (2)

QUESTION 48

Indicate the most accurate statement:

(1) Uniform Rule 42 provides that any variation of judgment sought under this rule must be brought by way of the application procedure.

(2) A judgment of a High Court which was procured by fraud may be set aside even if it is shown that the successful litigant was not a party to such fraud.

(3) When judgment is granted against a litigant who is not physically present in court but is represented by a legal practitioner, the court is authorised in terms of section 36 of the Magistrates' Court Act 32 of 1944 to thereafter vary or rescind the order by virtue of the fact that this litigant was "absent" for purposes of this section.

(4) A magistrates' court judgment becomes final and unalterable once it is pronounced by the magistrate, and can under no circumstance be varied or rescinded. (2)

QUESTION 49

Indicate the most accurate statement:

(1) The Supreme Court of Appeal is competent to hear appeals in respect of decisions or judgments handed down by the Competition Court.

(2) The single judge of the High Court whose judgment or order is being appealed against, may sit on the full bench at the hearing of the appeal.

(3) Both appeal and review must take place within a reasonable time.

(4) Once an appeal has been noted, a plaintiff may not continue to execute a judgment given in his favour, unless authorised by the court. (2)

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QUESTION 50

Indicate the most accurate statement:

(1) The heads of argument, as the name suggests, simply consists of the advocate's main points of argument to be presented to court.

(2) An appeal may be noted against interim orders, because the granting of such orders means that the party against whom it was given, has lost the case.

(3) If a magistrate allowed inadmissible evidence, the proceedings may be reviewed, and in some cases may be appealed against.

(4) A party dissatisfied with the outcome of a matter in any High Court, may approach the Supreme Court of Appeal directly. (2)

(50 x 2 marks each)
TOTAL: [100]

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UNIVERSITY EXAMINATIONS

UNIVERSITEITSEKSAMENS

UNISA university of south africa

CIV3701 (490263) May/June 2018

Civil Procedure

Duration 2 Hours 100 Marks

EXAMINERS

FIRST	PROF E HURTER ADV MB NDLAZI	MS MP MOTHAPO
SECOND	PROF OS SIBANDA	

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SECTION A

QUESTION 1

Indicate the most accurate statement

(1) Ordinary application proceedings must commence on notice
(2) If a party wishes to oppose an application, he or she must deliver a notice of intention to defend within the stated *dies induciae*
(3) The three sets of affidavits which are usually exchanged between the parties in application proceedings, are the founding affidavit, the answering affidavit and the replication
(4) An ordinary application is always brought when one of the parents after a divorce applies for an amendment of access rights in respect of minor children (3)

QUESTION 2

Indicate the most accurate statement

X issues a combined summons against Y in which X claims damages from Y During the course of the litigation process the following occurs

(1) X avers in the particulars of claim that breach of contract occurred on 06 March 2016 instead of on 06 March 2015 Y notices the error and applies for the amendment of the particulars of claim
(2) Y delivers a plea on the merits because he or she wishes to defend the action
(3) X is of the opinion that Y does not have a *bona fide* defence and that he or she has entered an appearance simply to delay the action Consequently, X applies for summary judgment
(4) Y is of the opinion that X's claim does not contain a cause of action and therefore he or she objects to X's summons by delivering an exception (3)

QUESTION 3

Indicate the most accurate statement

(1) The effect of an order for absolution of the instance is that parties are placed in the same position as if the case has never been brought
(2) Service by substituted service is effected overseas by an officer of the foreign court whose functions are similar to those of the sheriff of a South African court
(3) Arbitration is an example of a plea in abatement because it seeks to postpone an action until the dispute between the parties is resolved
(4) Where a final interdict is sought, the applicant always approaches the court by way of the summons procedure (3)

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QUESTION 4

Indicate the most accurate statement

(1) The basic rule for the drafting of pleadings is that the material facts as well as the evidence upon which the claim or defence is based must be fully pleaded
(2) A notice of intention to defend is the first pleading delivered by a defendant who wishes to defend an action
(3) Whether an action is instituted in the High Court by way of a combined or a simple summons, the prescribed *dies induciae* for the delivery of a plea (with or without a counterclaim), is the same
(4) In the High Court, pleadings are deemed to be closed as soon as the plaintiff has delivered a replication (3)

QUESTION 5

Indicate the most accurate statement

(1) In terms of Rule 35 of the Uniform Rules of Court a party may lawfully refuse to disclose correspondence exchanged "without prejudice"
(2) It is an accepted rule that an offer to settle in terms of Uniform Rule 34 and a tender in terms of the common law may not be disclosed in court before judgment has been given
(3) Failure by an advocate to sign the particulars of claim causes the document to be defective, and enables the defendant to use the remedy known as the "special plea' with which to rectify the defect
(4) The amendment procedure is used only to correct errors in pleadings, and may not, for instance, be used to extend the relief claimed (3)

QUESTION 6

Indicate the most accurate statement

(1) A party and party costs order is awarded if a party to the action has been guilty of bad behavior in conducting the action
(2) If a party fails to react to a discovery notice in the magistrate's court the party making the request may compel compliance in terms of Magistrates' Courts rule 23(8)
(3) A party in the magistrate's court has the option of paying into court to ward off a summary judgment application
(4) An application for an order for interim payment in terms of rule 18A of the Magistrates' Courts Rules may only be brought before the expiry of the *dies induciae* for giving a notice of intention to defend (3)

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QUESTION 7

Indicate the most accurate statement

(1) The automatic rent interdict is a separate type of summons used in the magistrates' courts
(2) In the magistrate's court it is unnecessary for a plaintiff to aver in a summons that a particular court has jurisdiction to hear a particular matter
(3) A defendant may require security of costs from the plaintiff if the plaintiff is a close corporation
(4) The grounds on which a party may apply for striking out in a magistrate's court are essentially the same as those that apply in a High Court (3)

QUESTION 8

Indicate the statement which is the closest to correct

(1) A power of attorney must be filed before a summons may be issued in the magistrates' courts
(2) A summons in the magistrates' courts which does not state that the whole cause of action arose within the court's area of jurisdiction in terms of section 28(1)(d) of the Magistrates' Courts Act, 1944, is excipiable
(3) If a defendant fails to give notice of his intention to defend within the stated *dies induciae* in the magistrates' courts, he may be barred from filing a late notice of intention to defend
(4) All applications for default judgment in the magistrates' courts are granted by a magistrate sitting in an open court (3)

QUESTION 9

Indicate the statement which is the closest to correct Determine which one of the following situations a High Court will be competent to exercise jurisdiction

(1) The plaintiff is an *incola* of the court in which the cause of action arose, and the defendant is an *incola* of the Republic
(2) Both parties to the action are *peregrini* and the cause of action arose outside the court's jurisdictional area The defendant submits to the jurisdiction of this court
(3) A spouse who is domiciled in the United Kingdom may not independently institute proceedings in a South African High Court in which the other spouse is domiciled
(4) A contract is concluded between X and Z in Bloemfontein for the sale of property situated in Durban X may institute proceedings against Z in the Durban High Court for registration of the property in his name (3)

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QUESTION 10

X has a claim against B for damages in the amount of R220 000 However, X owes B R30 000 for goods which B has sold and delivered to him Indicate the statement, which is the closest to correct

(1) If X deducts R30 000 from his claim in terms of section 39 of the Magistrates' Courts Act 32 of 1944, and thereupon succeeds in proving that B is liable for R190 000, the court will award R190 000 as damages
(2) If X abandons R30 000 from his claim in terms of section 38 of the Magistrates' Courts Act 32 of 1944, and thereupon succeeds in proving that B is liable for R190 000, the court will award R190 000 as damages
(3) If X does not rely on section 38 or 39 of the Magistrates' Courts Act 32 of 1944, there is no other way in which he will be able to bring this action within the jurisdiction of the district magistrates' courts
(4) X is entitled to claim R200 000 from B and thereafter institute an action for the balance of this claim, namely R30 000 (3)

(3x10)
[30]

SECTION B

QUESTION 1

T wishes to apply for admission as a sworn translator Answer the following questions

(a) What factors must be considered to determine the correct type of application that must be used? (2)

(b) Explain what type of application is appropriate for T to lodge under these circumstances (2)

(c) Name the documents that comprise the type of application identified in (b) above (2)

(d) Name four (4) methods by which normal service can be effected (4)
[10]

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UNIVERSITY EXAMINATIONS

UNIVERSITEITSEKSAMENS

UNISA university of south africa

CIP3701 (470289) October/November 2016

CIVIL PROCEDURE· COURT PROCEEDINGS

Duration 2 Hours

100 Marks

EXAMINERS

FIRST PROF F CASSIM, MISS NQ MABEKA, PROF E HURTER, MS MP MOTHAPO

SECOND PROF JA FARIS

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SECTION A

MULTIPLE-CHOICE QUESTIONS

QUESTION 1

Indicate the most accurate statement

(1) An interlocutory application is brought by way of a notice

(2) If a party wishes to oppose an application, he or she must deliver a replying affidavit within the *dies inducae*

(3) An *ex parte* application is brought when one party approaches the court in terms of Rule 35(7) of the Uniform Rules, for an order to compel the other party to discover some documents

(4) The formal documents used in application proceedings comprise pleadings and processes (3)

QUESTION 2

Indicate the most accurate statement

X issues a summons against Y in which X claims damages from Y The nature of the claim that X has against Y is

(1) a liquidated claim

(2) an unliquidated claim

(3) an illiquid claim

(4) a liquid claim (3)

QUESTION 3

Indicate the most accurate statement

(1) In terms of Uniform Rules of Court, only the plaintiff has the responsibility to apply for the set-down of a matter

(2) To be defined as a liquid document, payment of the debt must be unconditional and it must appear *ex facie* the document

(3) One of the rules for the drafting of processes is that only facts, and not the law, must be fully pleaded

(4) In the High Court, the amount tendered in settlement need only be available for payment and need not be paid into court (3)

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QUESTION 4

Indicate the most accurate statement

Summary judgment is relevant in the following circumstances

(1) where the defendant gives notice of his or her intention to defend timeously

(2) where the plaintiff contends that the defendant has no *bona fide* defence to the plaintiff's claim

(3) where the defendant fails to timeously deliver a notice of intention to defend

(4) where the action was instituted by means of a combined summons (3)

QUESTION 5

Indicate the most accurate statement

(1) It is possible to inspect a clearly specified document or tape recording in a party's possession relating to a reasonably anticipated issue in the action before the close of pleadings

(2) A defendant in reconvention (plaintiff in convention) may file a replication in reconvention in response to a defendant's counterclaim

(3) A special plea may be lodged against any pleading

(4) In the High Court pleadings are deemed to be closed only after the plaintiff has filed his or her replication (3)

QUESTION 6

Indicate the most accurate statement

(1) The plaintiff's summons must contain a reference to section 26(1) of the Constitution in instances where he or she seeks an order for movable property to be declared executable in the magistrates' courts

(2) A costs order *de bonis propriis* is granted if a party to the action has been guilty of bad behaviour in conducting the action

(3) An exception in the magistrate's court may be raised against a pleading that contains scandalous or vexatious averments

(4) The National Credit Act, 2005 requires a written notice by way of a summons to be properly served on the defendant (3)

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QUESTION 7

Indicate the most accurate statement

(1) The grounds on which a party may apply for striking out in a magistrate's court are more extensive than those for a similar application in the High Court

(2) In terms of rule 21A of the Magistrates' Courts Rules, only the court may declare pleadings closed, and parties may not agree that pleadings have closed

(3) If a party fails to respond to a request for discovery in the magistrates' courts, the party requesting discovery may enforce such request in terms of rule 23(8) of the Magistrates' Courts Rules

(4) A party in the magistrate's court who makes an error in his or her summons before service may amend such error by simply delivering the amended page/s of the summons to the opposing party and tender costs (3)

QUESTION 8

Indicate the most accurate statement

(1) An action in the magistrate's court may be instituted by means of a combined summons where the claim is based on a debt or liquidated demand

(2) The request for further particulars in the magistrate's court is intended only to enable a party to draw up a plea on the merits

(3) An order for interim payment in the magistrate's court is made by way of application proceedings

(4) If a claim in the magistrate's court is based on a liquid document, the plaintiff must attach the original liquid document to the application for summary judgment (3)

QUESTION 9

Indicate the most accurate statement

(1) Rule 42 of the Uniform Rules of Court provides that any variation of judgment sought under this rule must be brought by way of the summons procedure

(2) The proceedings of all lower courts and quasi-judicial bodies are subject to review

(3) If review proceedings are successful, the High Court that reviewed the proceedings will always refer the matter back to the particular body for a decision according to the correct procedure

(4) Both appeal and review must take place within a fixed period (3)

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QUESTION 10

Indicate the most accurate statement

(1) The single judge of the High Court whose judgment or order is being appealed against may sit on the full bench at the hearing of the appeal

(2) An application for leave to appeal to the Supreme Court of Appeal must be lodged in duplicate with the Clerk of the Court within the prescribed time limits

(3) An appeal from a magistrate's court can only be noted against a decision which is final in effect

(4) The Supreme Court of Appeal is not competent to hear appeals in respect of decisions or judgments handed down by the Competition Court (3)

(3 x 10)
[30]

SECTION B

PROCEDURE IN THE HIGH COURT

QUESTION 1

(a) A, a photographer, employed by a local gossip magazine *Revelations of the Rich and Famous*, takes some compromising photographs of a local married politician, B, and a soapy actress at a nightclub B is informed by a source that some of the photographs of him and the actress will be published on the front page of the magazine the following day B is worried that his wife, a well-respected judge, will find the photographs unacceptable With these facts in mind, answer the following questions

(i) Briefly discuss the specific procedure that B may use to approach the court for an interdict to prevent publication of the article and the photographs (3)

(ii) Name the order that the court will grant to ensure that the *audi alteram partem* principle is adhered to in the event of B being successful with his action (1)

(iii) Name the documents that will be used to institute the proceedings in (i) above (2)
[6]

(b) X issues summons against Y for payment of R450 000 for breach of contract Discuss whether the correct procedure is used in the following instances

(i) X issues a provisional sentence summons against Y (2)

(ii) Y raises his defence by way of a notice of intention to defend (2)

(iii) X applies for summary judgment after Y fails to timeously deliver a notice of intention to defend (2)

(iv) X files a rejoinder to Y's plea (2)

(v) X files a special plea to Y's counterclaim (2)
[10]

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UNISA university of south africa

CIV3701 (493283) October/November 2018

Civil Procedure

Duration 2 Hours

100 Marks

EXAMINERS :

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SECOND	PROF E HURTER	

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SECTION A

QUESTION 1

Indicate the most accurate statement

(1) Unlike the Supreme Court of Appeal, the Constitutional Court can never be approached directly

(2) Disputes concerning the constitutional status, powers or functions between organs of state in the national or provincial spheres may only be adjudicated by the Constitutional Court

(3) The Supreme Court of Appeal is competent to hear only non-constitutional matters

(4) A magistrate's court is not competent to adjudicate upon the validity of any legislation, but may pronounce upon the validity of the exercise of executive powers by the President

(3)

QUESTION 2

Indicate the most accurate statement

Section 2(1) of the Divorce Act of 1979 read with section 1(1) of the Domicile Act of 1992 provides that a court may exercise divorce jurisdiction on the following grounds

(1) Only if the wife is resident in the same High Court where her husband is resident

(2) Only if the wife is domiciled and resident in the area of jurisdiction of a High Court at the time of the institution of the action

(3) Only if both or either of the spouses are/is domiciled in the area of jurisdiction of a High Court on the date on which the action is instituted

(4) Only if both or either of the spouses are/is ordinarily resident in the area of jurisdiction of a High Court on the date on which the action is isntituted, and have/has been ordinarily resident in the Republic for less than one year immediately prior to the date of the marriage

(3)

QUESTION 3

Indicate the most accurate statement

(1) When it is said that a court exercises "inherent" jurisdiction, it means that the court's jurisdiction is derived from statute

(2) The South African civil procedural system is inquisitorial in nature

(3) The jurisdictional connecting factor *ratione rei sitae* is relevant only in respect of claims sounding in money

(4) The doctrine of effectiveness means that a court will be competent to exercise jurisdiction if compliance with the judgment can be expected

(3)

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QUESTION 4

Indicate the most accurate statement

A district magistrate's court has jurisdiction to hear the following matters

(1) An action by Y to compel Solly's Construction (Pty) Ltd to build a garage on Y's property in terms of a valid building contract

(2) A contractual action in terms of section 1 of the Credit Agreements Act of 1980 where the claim is for R90 000, being the outstanding balance of the purchase price and the value of the item sold is R200 000

(3) An action for damages as a result of a motor vehicle collision which occurred outside its area of jurisdiction, but the defendant's immovable property is situated in its area of jurisdiction

(4) An action for breach of contract in the amount of R150 000 and the plaintiff "resides" within the court's area of jurisdiction in terms of section 28(1)(a) of the Magistrates' Courts Act 32 of 1944 (3)

QUESTION 5

Indicate the most accurate statement

(1) A magistrate's court may only exercise jurisdiction over the person of a defendant if the defendant is domiciled in its area of jurisdiction

(2) The magistrate's court for the district of Pretoria is competent to exercise jurisdiction if the conclusion of the contract occurred in Pretoria and the contract was breached in the magisterial district of Johannesburg

(3) A magistrate's court would be competent to exercise jurisdiction if the cause of action did not occur wholly within its jurisdiction area, but there is compliance with the provisions of sections 29 and 46 of the Magistrates' Courts Act 32 of 1944, and the defendant raises no objection

(4) Section 39 of the Magistrates' Courts Act 42 of 1944 is used in cases where the plaintiff's claim exceeds the quantitative jurisdiction of the district magistrate's court and the defendant files a counterclaim The effect of this is that the amount of the counterclaim is automatically deducted from the amount claimed in the summons to bring the claim within the quantitative jurisdiciton limit of the court (3)

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QUESTION 6

Indicate the most accurate statement

Application proceedings may be instituted by

(1) only the *ex parte* application

(2) only the ordinary application

(3) either the *ex parte* application or the ordinary application

(4) either the *ex parte* application, the ordinary application, the interlocutory application or the urgent application (3)

QUESTION 7

Indicate the most accurate statement

(1) X avers in the particulars of claim that breach of contract occurred on 1 March 1917, instead of on 1 March 2017 Y notices the error and applies for the amendment of the particulars of claim

(2) Y delivers a plea on the merits because she wishes to give notice that she intends defending the action

(3) X is of the opinion that Y does not have a *bona fide* defence and that she has entered an appearance simply to delay the action Consequently, X applies for summary judgment

(4) X is of the opinion that Y's plea on the merits does not sustain a defence, and therefore he objects to Y's plea by raising an exception (3)

QUESTION 8

Indicate the most accurate statement

(1) All applications for default judgment in the magistrates' courts are granted by a magistrate sitting in an open court

(2) A plaintiff may request summary judgment where the claim is for specific performance and the defendant defends the action but does not have a *bona fide* defence

(3) If a claim in the magistrates' court is based on a liquid document, the plaintiff need not attach the original liquid document to the application for summary judgment

(4) An application for an order for interim payment in terms of rule 18A of the Magistrates' Courts Rules may only be brought before the expiry of the *dies induciae* for giving a notice of intention to defend (3)

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QUESTION 9

Indicate the most accurate statement

Bar is relevant in the following circumstances

(1) The defendant fails to timeously give notice of his intention to defend

(2) A party fails to appear at the trial

(3) A party fails to timeously deliver a plea on the merits

(4) A party fails to timeously request further particulars for trial (3)

QUESTION 10

Indicate the most accurate statement

Summary judgment is relevant in the following circumstances

(1) where the claim is for damages and the defendant gives a notice of intention to defend simply to delay proceedings

(2) where the claim is for goods sold and delivered and the defendant does not have a bona fide defence

(3) where the claim is for specific performance and the defendant does not have a bona fide defence

(4) where the claim is for the delivery of ten specially marked cows and the defendant fails to timeously deliver a notice of intention to defend (3)

(10x3) **[30]**

SECTION B

PROCEDURE IN THE HIGH COURT

QUESTION 1

(a) Helmut is a German citizen who lives permanently in Johannesburg with his wife, Trudi He buys her jewellery in an amount of R600 000 from Jan, a German tourist who is visiting South Africa The sale is concluded in Johannesburg Jan operates a gem stone business in Johannesburg Shortly after buying the jewellery, a friend informs him that the diamonds in the jewellery are fake, and that the jewellery is only worth about R450 000 Helmut wants to sue Jan for breach of contract in the High Court Answer the following questions, giving reasons for your answers

(i) Is Helmut an *incola* or a *peregrinus* of Johannesburg? (2)

(ii) Does the High Court situated in Johannesburg have jurisdiction *ad fundandam jurisdictionem* to hear the action that Helmut wishes to institute? (4)

(iii) Will your answer in (ii) differ if Jan was not a German tourist, but a South African citizen living in Cape Town? (4)

[10]

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UNIVERSITY EXAMINATIONS

UNIVERSITEITSEKSAMENS

UNISA university of south africa

CIP3701 (490213) October/November 2017

CIVIL PROCEDURE: COURT PROCEEDINGS

Duration 2 Hours 100 Marks

EXAMINERS

FIRST	PROF E HURTER ADV MB NDLAZI	MS MP MOTHAPO
SECOND	PROF OS SIBANDA	

Closed book examination

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Open Rubric

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SECTION A

QUESTION 1

Indicate the most accurate statement

(1) Application proceedings may be instituted by way of the *ex parte* application, the "ordinary" application and the urgent application

(2) If a party wishes to oppose an application, he or she must deliver a notice of intention to defend within the stated *dies inducIae*

(3) Ordinary application proceedings must be commenced on notice of motion

(4) An *ex parte* application is always brought when one of the parents after a divorce applies for an amendment of access rights in respect of minor children (3)

QUESTION 2

Indicate the most accurate statement

The following claim is an example of a debt or liquidated demand

(1) a claim for the payment of an amount for damages agreed upon in terms of a signed deed of settlement

(2) a claim for damages for breach of contract

(3) a claim for the delivery of several marked items

(4) a claim for a divorce order (3)

QUESTION 3

Indicate the most accurate statement

Bar is relevant in the following circumstances

(1) The defendant fails to timeously give notice of his intention to defend

(2) A party fails to appear at the trial

(3) A party fails to timeously deliver a plea on the merits

(4) A party fails to timeously request further particulars for trial (3)

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QUESTION 4

Indicate the most accurate statement

(1) X avers in the particulars of claim that breach of contract occurred on 1 March 1917, instead of on 1 March 2017 Y notices the error and applies for the amendment of the particulars of claim

(2) Y delivers a plea on the merits because she wishes to give notice that she intends defending the action

(3) X is of the opinion that Y does not have a *bona fide* defence and that she has entered an appearance simply to delay the action Consequently, X applies for summary judgment

(4) X is of the opinion that Y's plea on the merits does not sustain a defence, and therefore he objects to Y's plea by raising an exception (3)

QUESTION 5

Indicate the most accurate statement

(1) In terms of Rule 35 of the Uniform Rules of Court, a party may lawfully refuse to disclose correspondence exchanged "without prejudice"

(2) It is an accepted rule that an offer to settle in terms of Uniform Rule 34 and a tender in terms of the common law may not be disclosed in court before judgment has been given

(3) An interlocutory application is brought by way of a notice of motion

(4) The amendment procedure is used only to correct **errors** in pleadings, and may not, for instance, be used to extend the relief claimed (3)

QUESTION 6

Indicate the most accurate statement

(1) The discovery of documents in the magistrates' courts is important because it allows a litigant to set down his or case for trial

(2) A defendant may consent to judgment for a smaller amount than claimed in the summons, but he or she should then defend the action in respect of the balance of the claim

(3) A party may request further particulars for purposes of pleading in the magistrates' courts in terms of rule 16 of the Magistrates' Courts Rules

(4) In terms of rule 21A of the Magistrates' Courts Rules, the court only may declare pleadings closed, and parties may not agree that pleadings have closed (3)

[TURN OVER]

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QUESTION 7

Indicate the most accurate statement

(1) The National Credit Act, 2005 does not require the debt collection process to commence only with a letter of demand

(2) In the magistrate's court it is unnecessary for a plaintiff to aver in a summons that a particular court has jurisdiction to hear a particular matter

(3) A special plea in the magistrates' court is raised on a pleading which contains scandalous or vexatious allegations

(4) A plaintiff's summons must contain a reference to section 26(1) of the Constitution in instances where he or she seeks an order for movable property to be declared specially executable in the magistrates' court (3)

QUESTION 8

Indicate the statement which is the closest to correct

(1) All applications for default judgment in the magistrates' courts are granted by a magistrate sitting in an open court

(2) A plaintiff may request summary judgment where the claim is for specific performance and the defendant defends the action but does not have a *bona fide* defence

(3) If a claim in the magistrates' court is based on a liquid document, the plaintiff need not attach the original liquid document to the application for summary judgment

(4) An application for an order for interim payment in terms of rule 18A of the Magistrates' Courts Rules may only be brought before the expiry of the *dies inducіae* for giving a notice of intention to defend (3)

QUESTION 9

Indicate the statement which is the closest to correct

(1) Both appeal and review must take place within a prescribed period

(2) Proceedings of all courts and quasi-judicial bodies are subject to review

(3) Rule 42 of the Uniform Rules of Court provides that any variation of judgment sought under this Rule must be brought by way of the summons procedure

(4) The Supreme Court of Appeal is not competent to hear appeals in respect of decisions or judgments handed down by the Competition Court (3)

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QUESTION 10

Indicate the statement which is the closest to correct

(1) Parties are restricted to the record of proceedings during review, and may thus not go beyond it

(2) Although a magistrate may, during a trial, recall any witness for further examination, he or she may not *mero motu* call a new witness

(3) The single judge of the High Court whose judgment or order is being appealed against may sit on the full bench at the hearing of the appeal

(4) The Supreme Court of Appeal is the highest court of appeal in respect of all civil matters (3)

(10x3) = **[30]**

SECTION B

PROCEDURE IN THE HIGH COURT

QUESTION 1

(a) Mr X approaches the court to stop his neighbour from demolishing a boundary wall which forms part of his garage wall that was built at great cost, and with municipal approval Answer the following questions

(i) Name the remedy available to Mr X to stop the imminent destruction of the wall (1)

(ii) Name the type of proceedings that will be used to obtain the remedy referred to in (i) above (1)

(iii) Mr X succeeds with his action, and the court grants relief in a temporary form Indicate for how long this termporary remedy, after being granted, will remain in force (3)

[5]

(b) Fully discuss why it is advisable to draw up a power of attorney, despite not being required by the Unifrom Rules of Court (5)

(c) X issues summons against Y for payment of R450 000 for defamation **Fully explain** whether the correct procedure is used in the following instances (A mere "yes" or "no" will not warrant a mark)

(i) X issues a simple summons against Y (2)
(ii) Y raises his defence by way of a special plea (2)

(iii) X gives a notice of bar after Y fails to timeously deliver a notice of intention to defend (2)

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UNIVERSITY EXAMINATIONS

UNIVERSITEITSEKSAMENS

UNISA university of south africa

CIV3701 (475790) May/June 2018
SECOND PAPER

Civil Procedure

Duration 2 Hours 100 Marks

EXAMINERS .
FIRST PROF E HURTER MS MP MOTHAPO
ADV MB NDLAZI

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SECTION A

QUESTION 1

Indicate the most accurate statement

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(2) If a party wishes to oppose an application, he or she must deliver a notice of intention to defend within the stated *dies inducIae*

(3) Ordinary application proceedings must be commenced on notice

(4) An *ex parte* application is always brought when one of the parents after a divorce applies for an amendment of access rights in respect of minor children (3)

QUESTION 2

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The following claim is an example of a debt or liquidated demand

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QUESTION 3

Indicate the most accurate statement

Bar is relevant in the following circumstances

(1) The defendant fails to timeously give notice of his intention to defend

(2) A party fails to appear at the trial

(3) A party fails to timeously deliver a plea on the merits

(4) A party fails to timeously request further particulars for trial (3)

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QUESTION 4

Indicate the most accurate statement

(1) Legal representation is now allowed in the small claims courts

(2) A small claims court is not regarded as a court of record

(3) In the small claims court, the summons are the first documents to be changed between the parties

(4) The small claims court does not have jurisdiction to deal with the dissolution of marriage or customary marriages (3)

QUESTION 5

Indicate the most accurate statement

(1) The three primary processes of dispute resolution are arbitration, mediation and litigation

(2) Because mediation is the primary process, it is also regarded as a command process

(3) Arbitration is an alternative dispute resolution process that has much in common with litigation

(4) A mini-trial is a derivative of the processes of litigation and mediation (3)

QUESTION 6

Indicate the most accurate statement

Judgment by default is relevant in the following circumstances

(1) If the defendant fails to give timeous notice of intention to defend

(2) If a party fails to deliver an exception

(3) If a party fails to deliver a special plea timeously

(4) If a party fails timeously to request further particulars for the purposes of trial (3)

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QUESTION 7

Indicate the most accurate statement

(1) The National Credit Act, 2005 does not require the debt collection process to commence only with a letter of demand

(2) In the magistrate's court it is unnecessary for a plaintiff to aver in a summons that a particular court has jurisdiction to hear a particular matter

(3) A special plea in the magistrates' court is raised on a pleading which contains scandalous or vexatious allegations

(4) A plaintiff's summons must contain a reference to section 26(1) of the Constitution in instances where he or she seeks an order for movable property to be declared specially executable in the magistrates' court (3)

QUESTION 8

Indicate the statement which is the closest to correct

(1) All applications for default judgment in the magistrates' courts are granted by a magistrate sitting in an open court

(2) A plaintiff may request summary judgment where the claim is for specific performance and the defendant defends the action *but does* not have a *bona fide* defence

(3) If a claim in the magistrates' court is based on a liquid document, the plaintiff need not attach the original liquid document to the application for summary judgment

(4) An application for an order for interim payment in terms of rule 18A of the Magistrates' Courts Rules may only be brought before the expiry of the *dies induciae* for giving a notice of intention to defend (3)

QUESTION 9

Indicate the statement which is the closest to correct

(1) The Rules Board has the power to amend or repeal rules for both the High Courts and the lower courts

(2) The rules of the court are a means in themselves rather than an end to the means

(3) Since the rules exist for the courts, a court may not condone a litigant's non-compliance with its rules

(4) Magistrates' courts rules are referred to as the Uniform Rules of the court (3)

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QUESTION 10

Indicate the most accurate statement

(1) A combined summons is a unique document because the summons and declaration are inextricably linked

(2) In action proceedings, a counterclaim is always served with a plea on the merits

(3) A power of attorney usually seeks to define the extent of an attorney's mandate

(4) As an attorney, it is not possible to represent the client without first producing a power of attorney in all courts (3)

(10x3) **[30]**

SECTION B

QUESTION 1

(a) Mr X approaches the court to stop his neighbour from demolishing a boundary wall which forms part of his garage wall that was built at great cost, and with municipal approval Answer the following questions

(i) Name the remedy available to Mr X to stop the imminent destruction of the wall (1)

(ii) Name the type of proceedings that will be used to obtain the remedy referred to in (i) above (1)

(iii) Mr X succeeds with his action, and the court grants relief in a temporary form Indicate for how long this termporary remedy, after being granted, will remain in force (3)

(b) Fully discuss why it is advisable to draw up a power of attorney, despite not being required by the Uniform Rules of Court (5)

(c) X issues summons against Y for payment of R450 000 for defamation **Fully explain** whether the correct procedure is used in the following instances (A mere "yes" or "no" will not warrant a mark)

(i) X issues a simple summons against Y (2)

(ii) Y raises his defence by way of a special plea (2)

(iii) X gives a notice of bar after Y fails to timeously deliver a notice of intention to defend (2)

(iv) X files a rejoinder to Y's plea (2)

(v) Y file an opposing affidavit in defence of X's summons (2)

[20]

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UNISA university of south africa

CIV3701 (476622) May/June 2019

Civil Procedure

Duration 2 Hours 100 Marks

EXAMINERS

FIRST	MS MP MOTHAPO	ADV MB NDLAZI
SECOND	PROF E HURTER	

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SECTION A

QUESTION 1

Indicate the most accurate statement

(1) The South African High Courts are creatures of statute because they are subject to the provisions of the *Superior Courts Act, 2013*

(2) The Uniform Rules of Court are a common set of rules that uniformly regulate the conduct of proceedings of all High Courts

(3) Since the rules exist for the courts, a court cannot condone a litigant's non-compliance with its rules

(4) The Minister of Justice and the Rules Board may make rules relating to the manner in which the Constitutional Court may be engaged (3)

QUESTION 2

Determine which of the following groups of procedures are **not** related to each other

Indicate the most accurate statement

(1) an *ex parte* application and a rule *nisi*

(2) the combined summons and the simple summons

(3) default judgment and summary dismissal

(4) discovery of documents and a declaration (3)

QUESTION 3

Indicate the most accurate statement.

(1) A juristic person may only commence proceedings in a small claims court when represented by a duly nominated director or other natural person.

(2) A small claims court is not competent to grant an interdict

(3) The small claims courts have quasi-judicial powers which, unlike the magistrates' courts, enable the commissioner to play an active role in the proceedings.

(4) In small claims courts, a party is entitled to cross-examine his or her opponent (3)

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QUESTION 4

Indicate the most accurate statement

(1) In terms of Rule 35 of the Uniform Rules of Court, a party may lawfully refuse to disclose correspondence exchanged "without prejudice".

(2) It is an accepted rule that an offer to settle in terms of Uniform Rule 34 and a tender may not be disclosed in court before judgment has been given

(3) Failure by an advocate to sign the particulars of claim causes the document to be defective and enables the defendant to use the remedy known as the "special plea" with which to rectify the defect

(4) The amendment procedure is used only to correct errors in pleadings and may not, for instance, be used to extend the relief claimed. (3)

QUESTION 5

Indicate the most accurate statement

(1) Only the Constitutional Court may adjudicate on any alleged violation of a fundamental right entrenched under Chapter 2 of the Constitution of 1996

(2) Disputes concerning the constitutional status, powers and functions between organs of state in the national or provincial spheres may only be adjudicated by the Constitutional Court

(3) The Supreme Court of Appeal is competent to hear only non-constitutional matters

(4) A magistrates' court is not competent to adjudicate upon the validity of any legislation, but may pronounce upon the validity of the exercise of executive powers by the President (3)

QUESTION 6

Indicate the most accurate statement

(1) The Roman-law rule *actor sequitur forum rei* means that the plaintiff must institute action against the defendant in the High Court within whose area of jurisdiction the defendant is a citizen

(2) The ground *ratione rei gestae* applies when a court, in whose area of jurisdiction property or a person is situated/resident, has exclusive jurisdiction over that property or person

(3) An application for attachment must be brought before the main action commences, and the applicant must show that, *prima facie*, he or she has a cause of action

(4) On the basis of the ground *ratione domicilii*, a High Court may not exercise jurisdiction unless the defendant is physically present within its area of jurisdiction (3)

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QUESTION 7

Indicate the most accurate statement

(1) A power of attorney must be filed before a summons may be issued in the magistrates' courts

(2) A summons in the magistrates' courts which does not state that the whole cause of action arose within the court's area of jurisdiction in terms of section 28(1)(d) of the Magistrates' Courts Act 32 of 1944, is excipiable

(3) In the magistrates' courts, if a defendant fails to give notice of his intention to defend within the stated *dies inducIae*, he will be in default and will not be permitted to file a late notice of intention to defend.

(4) All applications for default judgment in the magistrates' courts are granted by a magistrate sitting in an open court (3)

QUESTION 8

Indicate the most accurate statement

Determine in which one of the following situations a High Court will be competent to exercise jurisdiction

(1) The plaintiff is an *incola* of the court in which the cause of action arose and the defendant is an *incola* of the Republic

(2) Both parties to the action are *peregrini* and the cause of action arose outside the court's jurisdictional area The defendant submits to the jurisdiction of this court

(3) A spouse who is domiciled in the United Kingdom may not independently institute proceedings in a South African High Court in which the other spouse is domiciled

(4) A contract is concluded between X and Z in Bloemfontein for the sale of immovable property situated in Durban. X may institute proceedings against Z in the Free State High Court, Bloemfontein for the registration of the property in his name. (3)

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QUESTION 9

Indicate the most accurate statement

(1) A magistrates' court may exercise jurisdiction over the person of a defendant if the defendant is domiciled within its area of jurisdiction

(2) A plaintiff may claim two amounts, namely R90 000 and R180 000 in the same summons, even if the joint amount of the claims exceeds the district magistrates' courts' jurisdiction under section 29 of the Magistrates' Courts Act 32 of 1944, provided that the parties are the same and provided that each claim is based on a separate cause of action

(3) A magistrates' court would not be competent to exercise jurisdiction if the cause of action did not arise wholly within its district, but there is compliance with the provisions of sections 29 and 46 of the Magistrates' Courts Act 32 of 1944, and the defendant raises no objection

(4) A claim for the delivery of specific movable property without an alternative claim for damages, even though the claim does not exceed R200 000, cannot be instituted in any magistrates' court because it is a claim for specific performance (3)

QUESTION 10

Indicate the most accurate statement.

(1) The review of the proceedings of quasi-judicial bodies takes place in terms of the common law

(2) Review under the Promotion of Administrative Justice Act 3 of 2000 ("PAJA") relates also to all administrative actions by a natural or juristic person

(3) If review proceedings are successful, the High Court which reviewed the proceedings will always refer the matter back to the particular body for a decision according to the correct procedure

(4) Both appeal and review must take place within a reasonable time (3)

(10 x 3)
[30]

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UNIVERSITY EXAMINATIONS

UNIVERSITEITSEKSAMENS

UNISA university of south africa

CIV3701 (493283) October/November 2018

Civil Procedure

Duration 2 Hours

100 Marks

EXAMINERS :

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SECOND	PROF E HURTER	

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SECTION A

QUESTION 1

Indicate the most accurate statement

(1) Unlike the Supreme Court of Appeal, the Constitutional Court can never be approached directly

(2) Disputes concerning the constitutional status, powers or functions between organs of state in the national or provincial spheres may only be adjudicated by the Constitutional Court

(3) The Supreme Court of Appeal is competent to hear only non-constitutional matters

(4) A magistrate's court is not competent to adjudicate upon the validity of any legislation, but may pronounce upon the validity of the exercise of executive powers by the President

(3)

QUESTION 2

Indicate the most accurate statement

Section 2(1) of the Divorce Act of 1979 read with section 1(1) of the Domicile Act of 1992 provides that a court may exercise divorce jurisdiction on the following grounds

(1) Only if the wife is resident in the same High Court where her husband is resident

(2) Only if the wife is domiciled and resident in the area of jurisdiction of a High Court at the time of the institution of the action

(3) Only if both or either of the spouses are/is domiciled in the area of jurisdiction of a High Court on the date on which the action is instituted

(4) Only if both or either of the spouses are/is ordinarily resident in the area of jurisdiction of a High Court on the date on which the action is isntituted, and have/has been ordinarily resident in the Republic for less than one year immediately prior to the date of the marriage

(3)

QUESTION 3

Indicate the most accurate statement

(1) When it is said that a court exercises "inherent" jurisdiction, it means that the court's jurisdiction is derived from statute

(2) The South African civil procedural system is inquisitorial in nature

(3) The jurisdictional connecting factor *ratione rei sitae* is relevant only in respect of claims sounding in money

(4) The doctrine of effectiveness means that a court will be competent to exercise jurisdiction if compliance with the judgment can be expected

(3)

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QUESTION 4

Indicate the most accurate statement

A district magistrate's court has jurisdiction to hear the following matters

(1) An action by Y to compel Solly's Construction (Pty) Ltd to build a garage on Y's property in terms of a valid building contract

(2) A contractual action in terms of section 1 of the Credit Agreements Act of 1980 where the claim is for R90 000, being the outstanding balance of the purchase price and the value of the item sold is R200 000

(3) An action for damages as a result of a motor vehicle collision which occurred outside its area of jurisdiction, but the defendant's immovable property is situated in its area of jurisdiction

(4) An action for breach of contract in the amount of R150 000 and the plaintiff "resides" within the court's area of jurisdiction in terms of section 28(1)(a) of the Magistrates' Courts Act 32 of 1944 (3)

QUESTION 5

Indicate the most accurate statement

(1) A magistrate's court may only exercise jurisdiction over the person of a defendant if the defendant is domiciled in its area of jurisdiction

(2) The magistrate's court for the district of Pretoria is competent to exercise jurisdiction if the conclusion of the contract occurred in Pretoria and the contract was breached in the magisterial district of Johannesburg

(3) A magistrate's court would be competent to exercise jurisdiction if the cause of action did not occur wholly within its jurisdiction area, but there is compliance with the provisions of sections 29 and 46 of the Magistrates' Courts Act 32 of 1944, and the defendant raises no objection

(4) Section 39 of the Magistrates' Courts Act 42 of 1944 is used in cases where the plaintiff's claim exceeds the quantitative jurisdiction of the district magistrate's court and the defendant files a counterclaim The effect of this is that the amount of the counterclaim is automatically deducted from the amount claimed in the summons to bring the claim within the quantitative jurisdiciton limit of the court (3)

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QUESTION 6

Indicate the most accurate statement

Application proceedings may be instituted by

(1) only the *ex parte* application

(2) only the ordinary application

(3) either the *ex parte* application or the ordinary application

(4) either the *ex parte* application, the ordinary application, the interlocutory application or the urgent application (3)

QUESTION 7

Indicate the most accurate statement

(1) X avers in the particulars of claim that breach of contract occurred on 1 March 1917, instead of on 1 March 2017 Y notices the error and applies for the amendment of the particulars of claim

(2) Y delivers a plea on the merits because she wishes to give notice that she intends defending the action

(3) X is of the opinion that Y does not have a *bona fide* defence and that she has entered an appearance simply to delay the action Consequently, X applies for summary judgment

(4) X is of the opinion that Y's plea on the merits does not sustain a defence, and therefore he objects to Y's plea by raising an exception (3)

QUESTION 8

Indicate the most accurate statement

(1) All applications for default judgment in the magistrates' courts are granted by a magistrate sitting in an open court

(2) A plaintiff may request summary judgment where the claim is for specific performance and the defendant defends the action but does not have a *bona fide* defence

(3) If a claim in the magistrates' court is based on a liquid document, the plaintiff need not attach the original liquid document to the application for summary judgment

(4) An application for an order for interim payment in terms of rule 18A of the Magistrates' Courts Rules may only be brought before the expiry of the *dies induciae* for giving a notice of intention to defend (3)

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QUESTION 9

Indicate the most accurate statement

Bar is relevant in the following circumstances

(1) The defendant fails to timeously give notice of his intention to defend

(2) A party fails to appear at the trial

(3) A party fails to timeously deliver a plea on the merits

(4) A party fails to timeously request further particulars for trial (3)

QUESTION 10

Indicate the most accurate statement

Summary judgment is relevant in the following circumstances

(1) where the claim is for damages and the defendant gives a notice of intention to defend simply to delay proceedings

(2) where the claim is for goods sold and delivered and the defendant does not have a bona fide defence

(3) where the claim is for specific performance and the defendant does not have a bona fide defence

(4) where the claim is for the delivery of ten specially marked cows and the defendant fails to timeously deliver a notice of intention to defend (3)

(10x3) **[30]**

SECTION B

PROCEDURE IN THE HIGH COURT

QUESTION 1

(a) Helmut is a German citizen who lives permanently in Johannesburg with his wife, Trudi He buys her jewellery in an amount of R600 000 from Jan, a German tourist who is visiting South Africa The sale is concluded in Johannesburg Jan operates a gem stone business in Johannesburg Shortly after buying the jewellery, a friend informs him that the diamonds in the jewellery are fake, and that the jewellery is only worth about R450 000 Helmut wants to sue Jan for breach of contract in the High Court Answer the following questions, giving reasons for your answers

(i) Is Helmut an *incola* or a *peregrinus* of Johannesburg? (2)

(ii) Does the High Court situated in Johannesburg have jurisdiction *ad fundandam jurisdictionem* to hear the action that Helmut wishes to institute? (4)

(iii) Will your answer in (ii) differ if Jan was not a German tourist, but a South African citizen living in Cape Town? (4)

[10]

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UNIVERSITY EXAMINATIONS

UNIVERSITEITSEKSAMENS

UNISA university of south africa

CIP3701 (470183) October/November 2015

CIVIL PROCEDURE. COURT PROCEEDINGS

Duration 2 Hours 100 Marks

EXAMINERS

FIRST	PROF F CASSIM MS MP MOTHAPO	PROF E HURTER
SECOND	PROF JA FARIS	

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SECTION A

MULTIPLE-CHOICE QUESTIONS

QUESTION 1

Indicate the most accurate statement

The following are all examples of a "debt or liquidated demand"

(1) a claim for the payment of an amount reflected in a written quotation

(2) a claim for a divorce order

(3) a claim for the payment of an amount reflected in a taxed and finalised bill of costs

(4) a claim for the delivery of ten farm animals (3)

QUESTION 2

Indicate the most accurate statement

(1) The rules of court allow only three sets of affidavits to be exchanged between the parties in opposed application proceedings

(2) If the plaintiff's claim is based on a duly executed acknowledgement of debt, the action may be instituted by way of the provisional sentence summons

(3) The commencement of action proceedings must always be preceded by a letter of demand

(4) In accordance with the *audi alteram partem* maxim, and in order to notify defendants of the proceedings instituted against them, notices of motion and summonses must be served on the defendants personally (3)

QUESTION 3

Indicate the most accurate statement

(1) In the High Court, the amount tendered in settlement need only be available for payment and need not be paid into court

(2) In terms of Uniform Rule 35 a party is obliged to disclose correspondence exchanged "without prejudice"

(3) In the High Court pleadings are deemed closed only after the plaintiff has filed his or her replication

(4) A defendant who fails to timeously deliver a notice of intention to defend must first be given a notice of bar before a plaintiff may request default judgment, provided the defendant ignores the notice of bar (3)

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QUESTION 4

Indicate the most accurate statement

(1) A party who loses a case will always be ordered to pay the winner's costs

(2) An interlocutory application is brought by way of notice of motion

(3) Where a final interdict is sought, the court is always approached by way of the summons procedure

(4) Although the general rule is that evidence must be given *viva voce* and in open court, the court may, for sufficient reasons, order that evidence be given on affidavit (3)

QUESTION 5

Indicate the most accurate statement

(1) Orders *ad factum praestandum* are orders in terms of which the debtor is ordered to perform a certain action, namely the payment of money

(2) An exception may only be raised against a declaration or particulars of claim

(3) Striking out is a procedure available to parties in both application and action proceedings

(4) A judgment can only be delivered at the end of a trial, because the court is only competent to deliver a judgment after hearing and properly considering the evidence (3)

QUESTION 6

Indicate the most accurate statement

(1) A combined summons is a unique document because the summons and the declaration are inextricably linked

(2) In action proceedings a counterclaim is always served with a plea on the merits

(3) A power of attorney usually seeks to define the extent of an attorney's mandate

(4) It is not possible to inspect a clearly specified document or tape recording in a party's possession and relating to a reasonably anticipated issue in the action before the close of pleadings in the High Court (3)

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QUESTION 7

Indicate the most accurate statement

(1) A special plea in the magistrates' court is raised on a pleading which contains scandalous or vexatious allegations

(2) The request for further particulars in the magistrates' court is meant only to allow a party to prepare a plea on the merits

(3) In the magistrates' court the original liquid document on which claims are based must be attached to applications for summary judgments and default judgments

(4) A replication or subsequent pleading, which would amount to a mere denial of allegations in the previous pleading, is unnecessary, and pleadings will be deemed closed in terms of rule 21A(b) of the Magistrates' Courts rules (3)

QUESTION 8

Indicate the most accurate statement

(1) Magistrates' Courts rule 11(1) provides that a party may consent to judgment provided it is done prior to delivering his or her notice of intention to defend

(2) The grounds on which a party may raise an exception in the magistrates' courts differ substantially from those that apply in the High Court for the same purpose

(3) If an offer to settle is disclosed to the court by a party before judgment is given, that party will be liable for a costs order against him or her, despite being successful in the action

(4) Magistrates' Courts rule 22(1) prescribes the form for a notice of set-down of an action for trial, and also sets out the procedure to obtain a trial date from the clerk of the court or the registrar (3)

QUESTION 9

Indicate the most accurate statement

(1) If a party fails to respond to a request for discovery in the magistrates' courts, the party requesting discovery may enforce such request in terms of Magistrates' Courts rule 23(8)

(2) The heads of argument simply contain the main points of counsel's address to court and the court order sought

(3) The issue of a *nulla bona* return by the sheriff after attempting to execute a warrant of execution automatically results in the attachment of a debtor's immovable property

(4) An offer to settle in terms of rule 18 of the Magistrates' Courts rules must be pleaded (3)

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QUESTION 10

Indicate the most accurate statement

(1) The action procedure must be followed when variation of judgment in terms of Uniform Rule 42 is sought

(2) When a magistrate has admitted inadmissible or incompetent evidence the proceedings may either be reviewed in terms of section 22(1)(d) of the Superior Courts Act, 2013, or may be appealed against

(3) If review proceedings are successful, the High Court may set aside the decision and substitute it with its own discretion

(4) Both appeal and review must take place within a reasonable time (3)

(10 x 3) = [70]

SECTION B

PROCEDURE IN THE HIGH COURT

QUESTION 1

(a) X has a claim of R600 000 against Y for payment of goods sold and delivered to Y, and which Y, despite demand, refuses to pay X institutes proceedings against Y in the local High Court In each of the following instances the procedure followed is **incorrect** Briefly state what the correct procedure should be **AND** give reasons for each answer

(i) X issues a combined summons to commence proceedings (2)

(ii) Y enters his notice of intention to defend within the *dies induciae* and X applies for default judgment (2)

(iii) X files a replication to Y's counterclaim (2)
[6]

(b) X, who lives in Pretoria, wishes to divorce her husband Y, who presumably lives somewhere in the Western Cape Because of these circumstances X will not be able to effect personal service of the summons However, X is informed that service by substituted service is possible Explain the procedure that X must follow to be allowed to effect service in this manner (3)

(c) Y is of the opinion that the High Court in Pretoria does not have jurisdiction to hear the matter referred to in (b) above Explain why Y can object to the court's lack of jurisdiction by raising a special plea (2)

(d) Y wishes to claim financial support from X in the matter referred to in (b) above Explain the procedure that he may follow to do so in the matter (2)

(e) Explain why it will be detrimental to Y if he fails to discover certain documents in his possession, despite a request from X to discover documents in terms of Uniform Rule 35 (2)

(f) Write a short note on the rules for the drafting of pleadings (5)
[20]

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UNIVERSITY EXAMINATIONS

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UNISA university of south africa

CIP3701 (490324) May/June 2015

CIVIL PROCEDURE: COURT PROCEEDINGS

Duration 2 Hours 100 Marks

EXAMINERS

FIRST	PROF F CASSIM MS M MOTHAPO	PROF E HURTER
SECOND	PROF JA FARIS	

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SECTION A

MULTIPLE-CHOICE QUESTIONS

QUESTION 1

Indicate the most accurate statement

Application proceedings may be instituted by

(1) only the *ex parte* application

(2) only the ordinary application

(3) either the ex parte application or the ordinary application

(4) either the *ex parte* application, the ordinary application, the interlocutory application or the urgent application (3)

QUESTION 2

Indicate the most accurate statement

(1) The supporting affidavit is the equivalent of a pleading in summons proceedings

(2) If the plaintiff's claim is based on an acknowledgement of debt the action may be instituted by way of a combined summons

(3) If a pedestrian sustains bodily injuries as a result of a collision between two vehicles but does not know which of the drivers was negligent, he or she may join both drivers as defendants

(4) In accordance with the *audi alteram partem* maxim, and in order to notify defendants of proceedings instituted against them, notices of motion and summonses must be served on defendants personally (3)

QUESTION 3

Indicate the most accurate statement

(1) A party who fails to timeously deliver a notice of intention to defend, is automatically barred

(2) A party who fails to timeously deliver a declaration and who despite having received a notice of bar persists in such failure, is in default as well as barred

(3) A notice of bar applies to a replication and subsequent pleadings, and failure to react to such notice will result in a party being automatically barred

(4) A defendant who fails to timeously deliver a notice of intention to defend must first be given a notice of bar before a plaintiff may request default judgment, provided the defendant ignores the notice of bar (3)

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QUESTION 4

"A court has a wide discretion when awarding costs after passing judgment " This statement implies the following

Indicate the most accurate statement

(1) A party who loses a case will be ordered to pay the winner's costs

(2) A party who wilfully destroys documents beneficial to his opponent's case, may be ordered to pay costs *de bonis propriis*

(3) A party who continues to defend a matter until the first day of the trial despite knowing that he or she is liable for payment of the full amount claimed, may be ordered to pay attorney-and-client costs

(4) A party may be awarded party-and-party costs if the court is of the opinion that it is unreasonable to deprive such a party of costs reasonably incurred before issue of summons (3)

QUESTION 5

Indicate the most accurate statement

(1) The general rule is that a party who has closed his or her case may not present further evidence, save in rebuttal

(2) The only purpose of delivering a notice and summaries in respect of expert witnesses in terms of Uniform Rule 36(9) is to avoid a party being taken by surprise at the trial

(3) An interdict is not a remedy in respect of an infringement that has already incurred, and therefore it may not be sought to compel the demolition of a structure which encroaches over a party's property boundaries

(4) Orders *ad factum praestandum* are orders in terms of which the debtor is ordered to perform a certain action, namely the payment of money (3)

QUESTION 6

Indicate the most accurate statement

In the High Courts the position is as follows --

(1) Pleadings are deemed closed only after the plaintiff has filed his or her replication

(2) In reply to a defendant's counterclaim, a defendant in reconvention may file a replication in reconvention

(3) An exception may be raised only against a declaration or the particulars of claim

(4) It is possible to inspect a clearly specified document or tape recording in a party's possession and relating to a reasonably anticipated issue in the action before the close of pleadings (3)

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QUESTION 7

Indicate the most accurate statement

(1) The National Credit Act 34 of 2005 requires that the debt collection process must start with a letter of demand

(2) The request for further particulars in the magistrates' court is meant only to allow a party to prepare a plea on the merits

(3) A replication or subsequent pleading which would amount to a mere denial of allegations in the previous pleading is unnecessary, and pleadings will be deemed closed in terms of rule 21A(b) of the Magistrates' Courts Rules

(4) A special plea in the magistrates' court is raised on a pleading which contains scandalous or vexatious allegations (3)

QUESTION 8

Indicate the most accurate statement

(1) If a party fails to respond to a request for discovery in the magistrates' courts, the party requesting discovery may enforce compliance with such request in terms of rule 23(8)

(2) In terms of rule 21A of the Magistrates' Courts Rules only the court may declare pleadings closed, and parties may not agree that pleadings have closed

(3) A party who wishes to consent to judgment in terms of rule 11 of the Magistrates' Courts Rules must do so before delivery of a notice of intention to defend

(4) The grounds on which a party may raise an exception in the magistrates' courts differ substantially from those that apply in the High Court for the same purpose (3)

QUESTION 9

Indicate the most accurate statement

(1) The issue of a *nulla bona* return by the sheriff after attempting to execute a warrant of execution automatically leads to the attachment of a debtor's immovable property

(2) A magistrate's court is not empowered in terms of the Magistrates' Courts Act 32 of 1944 to grant an order for absolution of the instance at the end of an entire case

(3) If a witness is not paid his witness and/or travelling fees, a magistrate may not without hearing evidence excuse such witness on the ground that the subpoena did not conform to the provisions of section 51(2) of the Magistrates' Courts Act 32 of 1944

(4) An offer to settle in terms of rule 18 of the Magistrates' Courts Rules must be pleaded (3)

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QUESTION 10

Indicate the most accurate statement

(1) A High Court derives the power to review the proceedings of inferior courts from the Superior Courts Act, 2013

(2) The Constitutional Court is the highest court of appeal in respect of certain civil matters

(3) Lower court proceedings are reviewed by way of the summons procedure

(4) Both appeal and review must take place within a reasonable time (3)

(10 x 3) = **[30]**

SECTION B

PROCEDURE IN THE HIGH COURT

QUESTION 1

(a) X and Y are neighbours who share a communal entrance gate and an entrance road The entrance gate is imposing and was expensive to construct It is also equipped with sophisticated security equipment Very old and scarce trees line the entrance road X accidentally learns that Y has hired a firm to remove these trees within days by using bulldozers There is every possibility that the entrance gate will also be demolished in the process X was never consulted about the removal of the trees, and he strongly opposes the intended actions X consults you and requests legal advice and assistance

(i) Name the **remedy** available to X to ward off the imminent destruction of the trees and the entrance gate (1)

(ii) State the **form** of proceedings that will be used to obtain the remedy referred to in (i) above (1)

(iii) Name the documents with which the proceedings referred to in (ii) above will be commenced (2)

(iv) If the proceedings referred to in (ii) above are brought on an urgent basis, name the order that the court will make to ensure that the *audi alteram partem* principle is adhered to (1)

[5]

(b) E and F are involved in a motor vehicle collision E suffers damages to his vehicle in the amount of R100 000, as well as damages due to bodily injury in the amount of R400 000 E issues summons against F Answer the following questions

(i) Explain fully why the combined summons is a pleading (2)

(ii) F has doubts about E's alleged physical injuries **Explain fully** how Uniform Rule 36 (dealing with inspections, examinations and expert testimony) may assist F to obtain verification of the alleged physical injuries (2)

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UNISA university of south africa

CIP3701 (470289) October/November 2016

CIVIL PROCEDURE· COURT PROCEEDINGS

Duration 2 Hours

100 Marks

EXAMINERS

FIRST PROF F CASSIM, MISS NQ MABEKA, PROF E HURTER, MS MP MOTHAPO

SECOND PROF JA FARIS

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SECTION A

MULTIPLE-CHOICE QUESTIONS

QUESTION 1

Indicate the most accurate statement

(1) An interlocutory application is brought by way of a notice

(2) If a party wishes to oppose an application, he or she must deliver a replying affidavit within the *dies inducae*

(3) An *ex parte* application is brought when one party approaches the court in terms of Rule 35(7) of the Uniform Rules, for an order to compel the other party to discover some documents

(4) The formal documents used in application proceedings comprise pleadings and processes (3)

QUESTION 2

Indicate the most accurate statement

X issues a summons against Y in which X claims damages from Y The nature of the claim that X has against Y is

(1) a liquidated claim

(2) an unliquidated claim

(3) an illiquid claim

(4) a liquid claim (3)

QUESTION 3

Indicate the most accurate statement

(1) In terms of Uniform Rules of Court, only the plaintiff has the responsibility to apply for the set-down of a matter

(2) To be defined as a liquid document, payment of the debt must be unconditional and it must appear *ex facie* the document

(3) One of the rules for the drafting of processes is that only facts, and not the law, must be fully pleaded

(4) In the High Court, the amount tendered in settlement need only be available for payment and need not be paid into court (3)

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QUESTION 4

Indicate the most accurate statement

Summary judgment is relevant in the following circumstances

(1) where the defendant gives notice of his or her intention to defend timeously

(2) where the plaintiff contends that the defendant has no *bona fide* defence to the plaintiff's claim

(3) where the defendant fails to timeously deliver a notice of intention to defend

(4) where the action was instituted by means of a combined summons (3)

QUESTION 5

Indicate the most accurate statement

(1) It is possible to inspect a clearly specified document or tape recording in a party's possession relating to a reasonably anticipated issue in the action before the close of pleadings

(2) A defendant in reconvention (plaintiff in convention) may file a replication in reconvention in response to a defendant's counterclaim

(3) A special plea may be lodged against any pleading

(4) In the High Court pleadings are deemed to be closed only after the plaintiff has filed his or her replication (3)

QUESTION 6

Indicate the most accurate statement

(1) The plaintiff's summons must contain a reference to section 26(1) of the Constitution in instances where he or she seeks an order for movable property to be declared executable in the magistrates' courts

(2) A costs order *de bonis propriis* is granted if a party to the action has been guilty of bad behaviour in conducting the action

(3) An exception in the magistrate's court may be raised against a pleading that contains scandalous or vexatious averments

(4) The National Credit Act, 2005 requires a written notice by way of a summons to be properly served on the defendant (3)

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QUESTION 7

Indicate the most accurate statement

(1) The grounds on which a party may apply for striking out in a magistrate's court are more extensive than those for a similar application in the High Court

(2) In terms of rule 21A of the Magistrates' Courts Rules, only the court may declare pleadings closed, and parties may not agree that pleadings have closed

(3) If a party fails to respond to a request for discovery in the magistrates' courts, the party requesting discovery may enforce such request in terms of rule 23(8) of the Magistrates' Courts Rules

(4) A party in the magistrate's court who makes an error in his or her summons before service may amend such error by simply delivering the amended page/s of the summons to the opposing party and tender costs (3)

QUESTION 8

Indicate the most accurate statement

(1) An action in the magistrate's court may be instituted by means of a combined summons where the claim is based on a debt or liquidated demand

(2) The request for further particulars in the magistrate's court is intended only to enable a party to draw up a plea on the merits

(3) An order for interim payment in the magistrate's court is made by way of application proceedings

(4) If a claim in the magistrate's court is based on a liquid document, the plaintiff must attach the original liquid document to the application for summary judgment (3)

QUESTION 9

Indicate the most accurate statement

(1) Rule 42 of the Uniform Rules of Court provides that any variation of judgment sought under this rule must be brought by way of the summons procedure

(2) The proceedings of all lower courts and quasi-judicial bodies are subject to review

(3) If review proceedings are successful, the High Court that reviewed the proceedings will always refer the matter back to the particular body for a decision according to the correct procedure

(4) Both appeal and review must take place within a fixed period (3)

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QUESTION 10

Indicate the most accurate statement

(1) The single judge of the High Court whose judgment or order is being appealed against may sit on the full bench at the hearing of the appeal

(2) An application for leave to appeal to the Supreme Court of Appeal must be lodged in duplicate with the Clerk of the Court within the prescribed time limits

(3) An appeal from a magistrate's court can only be noted against a decision which is final in effect

(4) The Supreme Court of Appeal is not competent to hear appeals in respect of decisions or judgments handed down by the Competition Court (3)

(3 x 10)
[30]

SECTION B

PROCEDURE IN THE HIGH COURT

QUESTION 1

(a) A, a photographer, employed by a local gossip magazine *Revelations of the Rich and Famous*, takes some compromising photographs of a local married politician, B, and a soapy actress at a nightclub B is informed by a source that some of the photographs of him and the actress will be published on the front page of the magazine the following day B is worried that his wife, a well-respected judge, will find the photographs unacceptable With these facts in mind, answer the following questions

(i) Briefly discuss the specific procedure that B may use to approach the court for an interdict to prevent publication of the article and the photographs (3)

(ii) Name the order that the court will grant to ensure that the *audi alteram partem* principle is adhered to in the event of B being successful with his action (1)

(iii) Name the documents that will be used to institute the proceedings in (i) above (2)
[6]

(b) X issues summons against Y for payment of R450 000 for breach of contract Discuss whether the correct procedure is used in the following instances

(i) X issues a provisional sentence summons against Y (2)

(ii) Y raises his defence by way of a notice of intention to defend (2)

(iii) X applies for summary judgment after Y fails to timeously deliver a notice of intention to defend (2)

(iv) X files a rejoinder to Y's plea (2)

(v) X files a special plea to Y's counterclaim (2)
[10]

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UNIVERSITY EXAMINATIONS

UNIVERSITEITSEKSAMENS

UNISA university of south africa

CIV3701 (478389) October/November 2019

Civil Procedure

Duration 2 Hours 100 Marks

EXAMINERS

FIRST	MS MP MOTHAPO	ADV MB NDLAZI
SECOND	PROF E HURTER	

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SECTION A

QUESTION 1

Indicate the most accurate statement

(1) Only the Constitutional Court may adjudicate any alleged violation of a fundamental right entrenched under Chapter 2 of the Constitution, 1996

(2) Disputes concerning the constitutional status, powers or functions between organs of state in the national or provincial spheres may only be adjudicated upon by the Constitutional Court

(3) The Supreme Court of Appeal is competent to hear only non-constitutional matters

(4) A magistrate's court is not competent to adjudicate upon the validity of any legislation, but may pronounce upon the validity of the exercise of executive powers by the President (3)

QUESTION 2

Indicate the most accurate statement

(1) Section 28(1A) of the Magistrates' Courts Act 32 of 1944 provides that a regional magistrates' court shall have divorce jurisdiction over either party who is an *incola* within the jurisdictional area of the court

(2) Section 28(1A) of the Magistrates' Courts Act 32 of 1944 provides that a regional magistrates' court shall have jurisdiction to determine actions relating to the nullity of a marriage and divorce, as well as related matters

(3) A regional magistrates' court may hear any matter provided for in terms of the Recognition of Customary Marriages Act, 1998

(4) Section 28(1A) of the Magistrates' Courts Act 32 of 1944 provides that a district magistrates' court shall have divorce jurisdiction over either party who is resident or domiciled within the jurisdiction of the particular court (3)

QUESTION 3

Indicate the most accurate statement

(1) A claim instituted by a registered company in the small claims court may not exceed the quantitative jurisdiction of R20 000 imposed by the Minister of Justice and Correctional Services under the Small Claims Courts Act, 1984

(2) In a small claims court, a party is entitled to cross-examine his or her opponent

(3) A small claims court can hear an action for seduction or breach of promise to marry

(4) A letter of demand is the first document in small claims court proceedings (3)

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QUESTION 4

Indicate the most accurate statement

A district magistrate's court has jurisdiction to hear the following matters

(1) An action by Y to compel Solly's Construction (Pty) Ltd to build a garage on Y's property in terms of a valid building contract

(2) A contractual action in terms of section 1 of the Credit Agreements Act of 1980 where the claim is for R90 000, being the outstanding balance of the purchase price and the value of the item sold is R200 000

(3) An action for damages as a result of a motor vehicle collision which occurred outside its area of jurisdiction, but the defendant's immovable property is situated in its area of jurisdiction

(4) An action for breach of contract in the amount of *R150 000* and the plaintiff "resides" within the court's area of jurisdiction in terms of section 28(1)(a) of the Magistrates' *Courts* Act 32 of 1944 (3)

QUESTION 5

Indicate the most accurate statement

(1) An *incola* of a particular High Court is a person who is domiciled or resident in that court's area of jurisdiction, and must be a South African citizen

(2) The *forum rei sitae* will exercise jurisdiction over immovable property only following the attachment thereof

(3) On the basis of the *actor sequitur forum rei* rule, a High Court may not exercise jurisdiction over a defendant unless the defendant is domiciled or resident within its area of jurisdiction

(4) An application for attachment must be brought before the main action commences, and the applicant must show that, *prima facie*, he or she has a cause of action (3)

QUESTION 6

Indicate the most accurate statement

Application proceedings may be instituted by

(1) only the *ex parte* application

(2) only the ordinary application

(3) either the *ex parte* application or the ordinary application

(4) either the *ex parte* application, the ordinary application, the interlocutory application or the urgent application (3)

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QUESTION 7

Indicate the most accurate statement

(1) If a dispute arises over whether a summons was served on a particular party, such dispute can be resolved by referring to the return of service of the sheriff

(2) Leaving a copy of a summons at the defendant's place of employment does not fulfill the stated requirements for ordinary service

(3) A combined summons is a unique document in the sense that the summons and the declaration are inextricably linked

(4) A notice of intention to defend is the first pleading which is exchanged between parties after service of the summons on the defendant (3)

QUESTION 8

Indicate the most accurate statement

Bar is relevant in the following circumstances

(1) The defendant fails to timeously give notice of his intention to defend

(2) A party fails to appear at the trial

(3) A party fails to timeously deliver a plea on the merits

(4) A party fails to timeously request further particulars for trial (3)

QUESTION 9

X hands over a cheque to Y as payment in terms of a contract The bank returns the cheque to Y, marked "refer to drawer" As a result, Y now wishes to institute action against X Y may institute the action in the following manner

Indicate the most accurate statement

(1) by using a combined summons

(2) only by using the simple summons

(3) by applying for summary judgment

(4) by using either the provisional sentence summons or the simple summons (3)

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QUESTION 10

Indicate the most accurate statement

(1) A litigant who is dissatisfied with the outcome of a matter in the magistrates' court always has one appeal as of right

(2) The proceedings of all courts and quasi-judicial bodies are subject to review by the High Court in terms of the Superior Courts Act, 2013

(3) In terms of Rule 42 of the Uniform Rules of Court, any variation of judgment sought under this rule must be done by action procedure

(4) In terms of common law a judgment of the High Court may be set aside because of error on the part of the court (3)

(10x3) **[30]**

SECTION B

PROCEDURE IN THE HIGH COURT

QUESTION 1

(a) Write a short note on the meaning of jurisdiction (4)

(b) X is an *incola* of the Durban High Court Z wishes to commence proceedings against X, but is not sure whether he should proceed to do so This is because Z discovers, after seeing X's house closed up and shuttered, that X's employer sent him to manage a project in Cape Town for three months With these facts in mind, answer the following questions

(i) Fully explain whether Z may issue summons against X out of the Durban High Court (4)

(ii) If Z does decide to issue summons out of the Durban High Court, would it be possible to serve the summons on X in Cape Town? Fully explain your answer (2)

(c) R wishes to apply for an order for attachment *ad fundandam iurisdictionem* Fully explain whether a High Court would grant such an order in the following circumstances --

(i) if both the plaintiff and the defendant are *peregrini* of the Republic? (4)

(ii) if the cause of action arose outside the jurisdictional area of the court concerned? (2)

(d) S enters into a contract of sale with T, whereby S purchases T's immovable property

(i) T is delaying the transfer of a certain property by failing to obtain clearance certificates for the payment of municipal rates and taxes S wishes to commence proceedings against T because of this delay Discuss the grounds on which a High Court may exercise jurisdiction if S wishes to proceed as indicated (2)

(ii) Discuss the grounds on which a High Court may exercise jurisdiction if T wants to institute proceedings against S because S, despite demand, failed to pay the deposit due and payable under the contract (2)

[20]

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UNIVERSITY EXAMINATIONS

UNIVERSITEITSEKSAMENS

UNISA university of south africa

CIV3701 (476622) May/June 2019

Civil Procedure

Duration 2 Hours 100 Marks

EXAMINERS

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SECOND	PROF E HURTER	

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SECTION A

QUESTION 1

Indicate the most accurate statement

(1) The South African High Courts are creatures of statute because they are subject to the provisions of the *Superior Courts Act, 2013*

(2) The Uniform Rules of Court are a common set of rules that uniformly regulate the conduct of proceedings of all High Courts

(3) Since the rules exist for the courts, a court cannot condone a litigant's non-compliance with its rules

(4) The Minister of Justice and the Rules Board may make rules relating to the manner in which the Constitutional Court may be engaged (3)

QUESTION 2

Determine which of the following groups of procedures are **not** related to each other

Indicate the most accurate statement

(1) an *ex parte* application and a rule *nisi*

(2) the combined summons and the simple summons

(3) default judgment and summary dismissal

(4) discovery of documents and a declaration (3)

QUESTION 3

Indicate the most accurate statement.

(1) A juristic person may only commence proceedings in a small claims court when represented by a duly nominated director or other natural person.

(2) A small claims court is not competent to grant an interdict

(3) The small claims courts have quasi-judicial powers which, unlike the magistrates' courts, enable the commissioner to play an active role in the proceedings.

(4) In small claims courts, a party is entitled to cross-examine his or her opponent (3)

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QUESTION 4

Indicate the most accurate statement

(1) In terms of Rule 35 of the Uniform Rules of Court, a party may lawfully refuse to disclose correspondence exchanged "without prejudice".

(2) It is an accepted rule that an offer to settle in terms of Uniform Rule 34 and a tender may not be disclosed in court before judgment has been given

(3) Failure by an advocate to sign the particulars of claim causes the document to be defective and enables the defendant to use the remedy known as the "special plea" with which to rectify the defect

(4) The amendment procedure is used only to correct errors in pleadings and may not, for instance, be used to extend the relief claimed. (3)

QUESTION 5

Indicate the most accurate statement

(1) Only the Constitutional Court may adjudicate on any alleged violation of a fundamental right entrenched under Chapter 2 of the Constitution of 1996

(2) Disputes concerning the constitutional status, powers and functions between organs of state in the national or provincial spheres may only be adjudicated by the Constitutional Court

(3) The Supreme Court of Appeal is competent to hear only non-constitutional matters

(4) A magistrates' court is not competent to adjudicate upon the validity of any legislation, but may pronounce upon the validity of the exercise of executive powers by the President (3)

QUESTION 6

Indicate the most accurate statement

(1) The Roman-law rule *actor sequitur forum rei* means that the plaintiff must institute action against the defendant in the High Court within whose area of jurisdiction the defendant is a citizen

(2) The ground *ratione rei gestae* applies when a court, in whose area of jurisdiction property or a person is situated/resident, has exclusive jurisdiction over that property or person

(3) An application for attachment must be brought before the main action commences, and the applicant must show that, *prima facie*, he or she has a cause of action

(4) On the basis of the ground *ratione domicilii*, a High Court may not exercise jurisdiction unless the defendant is physically present within its area of jurisdiction (3)

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QUESTION 7

Indicate the most accurate statement

(1) A power of attorney must be filed before a summons may be issued in the magistrates' courts

(2) A summons in the magistrates' courts which does not state that the whole cause of action arose within the court's area of jurisdiction in terms of section 28(1)(d) of the Magistrates' Courts Act 32 of 1944, is excipiable

(3) In the magistrates' courts, if a defendant fails to give notice of his intention to defend within the stated *dies inducIae*, he will be in default and will not be permitted to file a late notice of intention to defend.

(4) All applications for default judgment in the magistrates' courts are granted by a magistrate sitting in an open court (3)

QUESTION 8

Indicate the most accurate statement

Determine in which one of the following situations a High Court will be competent to exercise jurisdiction

(1) The plaintiff is an *incola* of the court in which the cause of action arose and the defendant is an *incola* of the Republic

(2) Both parties to the action are *peregrini* and the cause of action arose outside the court's jurisdictional area The defendant submits to the jurisdiction of this court

(3) A spouse who is domiciled in the United Kingdom may not independently institute proceedings in a South African High Court in which the other spouse is domiciled

(4) A contract is concluded between X and Z in Bloemfontein for the sale of immovable property situated in Durban. X may institute proceedings against Z in the Free State High Court, Bloemfontein for the registration of the property in his name. (3)

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QUESTION 9

Indicate the most accurate statement

(1) A magistrates' court may exercise jurisdiction over the person of a defendant if the defendant is domiciled within its area of jurisdiction

(2) A plaintiff may claim two amounts, namely R90 000 and R180 000 in the same summons, even if the joint amount of the claims exceeds the district magistrates' courts' jurisdiction under section 29 of the Magistrates' Courts Act 32 of 1944, provided that the parties are the same and provided that each claim is based on a separate cause of action

(3) A magistrates' court would not be competent to exercise jurisdiction if the cause of action did not arise wholly within its district, but there is compliance with the provisions of sections 29 and 46 of the Magistrates' Courts Act 32 of 1944, and the defendant raises no objection

(4) A claim for the delivery of specific movable property without an alternative claim for damages, even though the claim does not exceed R200 000, cannot be instituted in any magistrates' court because it is a claim for specific performance (3)

QUESTION 10

Indicate the most accurate statement.

(1) The review of the proceedings of quasi-judicial bodies takes place in terms of the common law

(2) Review under the Promotion of Administrative Justice Act 3 of 2000 ("PAJA") relates also to all administrative actions by a natural or juristic person

(3) If review proceedings are successful, the High Court which reviewed the proceedings will always refer the matter back to the particular body for a decision according to the correct procedure

(4) Both appeal and review must take place within a reasonable time (3)

(10 x 3)
[30]

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SECTION A

QUESTION 1

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(2) Disputes concerning the constitutional status, powers or functions between organs of state in the national or provincial spheres may only be adjudicated upon by the Constitutional Court

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(1) Section 28(1A) of the Magistrates' Courts Act 32 of 1944 provides that a regional magistrates' court shall have divorce jurisdiction over either party who is an *incola* within the jurisdictional area of the court

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(3) A regional magistrates' court may hear any matter provided for in terms of the Recognition of Customary Marriages Act, 1998

(4) Section 28(1A) of the Magistrates' Courts Act 32 of 1944 provides that a district magistrates' court shall have divorce jurisdiction over either party who is resident or domiciled within the jurisdiction of the particular court (3)

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Indicate the most accurate statement

(1) A claim instituted by a registered company in the small claims court may not exceed the quantitative jurisdiction of R20 000 imposed by the Minister of Justice and Correctional Services under the Small Claims Courts Act, 1984

(2) In a small claims court, a party is entitled to cross-examine his or her opponent

(3) A small claims court can hear an action for seduction or breach of promise to marry

(4) A letter of demand is the first document in small claims court proceedings (3)

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A district magistrate's court has jurisdiction to hear the following matters

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(3) An action for damages as a result of a motor vehicle collision which occurred outside its area of jurisdiction, but the defendant's immovable property is situated in its area of jurisdiction

(4) An action for breach of contract in the amount of *R150 000* and the plaintiff "resides" within the court's area of jurisdiction in terms of section 28(1)(a) of the Magistrates' *Courts* Act 32 of 1944 (3)

QUESTION 5

Indicate the most accurate statement

(1) An *incola* of a particular High Court is a person who is domiciled or resident in that court's area of jurisdiction, and must be a South African citizen

(2) The *forum rei sitae* will exercise jurisdiction over immovable property only following the attachment thereof

(3) On the basis of the *actor sequitur forum rei* rule, a High Court may not exercise jurisdiction over a defendant unless the defendant is domiciled or resident within its area of jurisdiction

(4) An application for attachment must be brought before the main action commences, and the applicant must show that, *prima facie*, he or she has a cause of action (3)

QUESTION 6

Indicate the most accurate statement

Application proceedings may be instituted by

(1) only the *ex parte* application

(2) only the ordinary application

(3) either the *ex parte* application or the ordinary application

(4) either the *ex parte* application, the ordinary application, the interlocutory application or the urgent application (3)

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QUESTION 7

Indicate the most accurate statement

(1) If a dispute arises over whether a summons was served on a particular party, such dispute can be resolved by referring to the return of service of the sheriff

(2) Leaving a copy of a summons at the defendant's place of employment does not fulfill the stated requirements for ordinary service

(3) A combined summons is a unique document in the sense that the summons and the declaration are inextricably linked

(4) A notice of intention to defend is the first pleading which is exchanged between parties after service of the summons on the defendant (3)

QUESTION 8

Indicate the most accurate statement

Bar is relevant in the following circumstances

(1) The defendant fails to timeously give notice of his intention to defend

(2) A party fails to appear at the trial

(3) A party fails to timeously deliver a plea on the merits

(4) A party fails to timeously request further particulars for trial (3)

QUESTION 9

X hands over a cheque to Y as payment in terms of a contract The bank returns the cheque to Y, marked "refer to drawer" As a result, Y now wishes to institute action against X Y may institute the action in the following manner

Indicate the most accurate statement

(1) by using a combined summons

(2) only by using the simple summons

(3) by applying for summary judgment

(4) by using either the provisional sentence summons or the simple summons (3)

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QUESTION 10

Indicate the most accurate statement

(1) A litigant who is dissatisfied with the outcome of a matter in the magistrates' court always has one appeal as of right

(2) The proceedings of all courts and quasi-judicial bodies are subject to review by the High Court in terms of the Superior Courts Act, 2013

(3) In terms of Rule 42 of the Uniform Rules of Court, any variation of judgment sought under this rule must be done by action procedure

(4) In terms of common law a judgment of the High Court may be set aside because of error on the part of the court (3)

(10x3) **[30]**

SECTION B

PROCEDURE IN THE HIGH COURT

QUESTION 1

(a) Write a short note on the meaning of jurisdiction (4)

(b) X is an *incola* of the Durban High Court Z wishes to commence proceedings against X, but is not sure whether he should proceed to do so This is because Z discovers, after seeing X's house closed up and shuttered, that X's employer sent him to manage a project in Cape Town for three months With these facts in mind, answer the following questions

(i) Fully explain whether Z may issue summons against X out of the Durban High Court (4)

(ii) If Z does decide to issue summons out of the Durban High Court, would it be possible to serve the summons on X in Cape Town? Fully explain your answer (2)

(c) R wishes to apply for an order for attachment *ad fundandam iurisdictionem* Fully explain whether a High Court would grant such an order in the following circumstances --

(i) if both the plaintiff and the defendant are *peregrini* of the Republic? (4)

(ii) if the cause of action arose outside the jurisdictional area of the court concerned? (2)

(d) S enters into a contract of sale with T, whereby S purchases T's immovable property

(i) T is delaying the transfer of a certain property by failing to obtain clearance certificates for the payment of municipal rates and taxes S wishes to commence proceedings against T because of this delay Discuss the grounds on which a High Court may exercise jurisdiction if S wishes to proceed as indicated (2)

(ii) Discuss the grounds on which a High Court may exercise jurisdiction if T wants to institute proceedings against S because S, despite demand, failed to pay the deposit due and payable under the contract (2)

[20]

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UNIVERSITY EXAMINATIONS

UNIVERSITEITSEKSAMENS

UNISA

CIP3701 (497742) May/June 2013

CIVIL PROCEDURE: COURT PROCEEDINGS

Duration 2 Hours 100 Marks

EXAMINERS

FIRST	PROF F CASSIM	PROF E HURTER
	MR MJ MATHENJWA	PROF OS SIBANDA
SECOND	PROF JA FARIS	

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2 **In Section B ensure that you give full reasons for each answer. A mere Yes/No will not earn any marks.**
3 **Ensure that the time you devote to each question is proportionate to the marks allotted to the particular question**
4 **Please use the mark-reading sheet which has been issued with your examination answer book to answer the questions in Section A. Read the instructions in connection with the use of the mark-reading sheet carefully. Failure to do so may result in the computer being unable to read your answers. Please ensure that the completed mark-reading sheet is handed in with your answer book.**
5 **Ten (10) questions (marked 1 – 10) follow under Section A. Each question consists of four statements. Some statements are accurate and some are inaccurate You have to decide which of the statements are the most accurate and indicate it on the mark-reading sheet according to the number of the statement. For example, if you decide statement 2 of Question 1 is the most accurate, then mark option [2] on the mark-reading sheet next to Question 1**
6 **PLEASE COPY YOUR ANSWERS IN RESPECT OF SECTION A (QUESTIONS 1-10) ONTO THE FIRST PAGE OF YOUR ANSWER BOOK. This will ensure that this section is marked if the mark-reading sheet is lost or unreadable**

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SECTION A

MULTIPLE-CHOICE QUESTIONS

QUESTION 1

Indicate the most accurate statement

If the plaintiff's claim is based on a dishonoured cheque, the action may be instituted by way of the following type of summons

(1) Only the simple summons

(2) Either the provisional sentence summons or the simple summons

(3) The combined summons

(4) Only the provisional sentence summons (3)

QUESTION 2

D wishes to divorce her husband, F F lives and works in London, and D knows his exact whereabouts The summons must be served on F by way of

(1) substituted service (because F's exact whereabouts are known)

(2) normal service (because it is a matrimonial action)

(3) edictal citation (because F is overseas)

(4) a combination of substituted service and edictal citation (because F is overseas and his exact whereabouts are known) (3)

QUESTION 3

Indicate the statement which is the closest to correct

(1) In terms of Rule 35 of the Uniform Rules of Court, a party may not lawfully refuse to disclose correspondence exchanged between that party and his or her attorney

(2) It is an accepted rule that an offer to settle in terms of Uniform Rule 34 and a tender may not be disclosed in court before judgment has been given

(3) Failure by an advocate to sign the particulars of claim causes the document to be defective, and enables the defendant to use the remedy known as the "special plea" with which to rectify the defect

(4) The amendment procedure is used only to correct **errors** in pleadings, and may not, for instance, be used to extend the relief claimed (3)

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QUESTION 4

Indicate the statement which is the closest to correct

Bar may be raised in the following circumstances

(1) The defendant does not timeously give notice of intention to defend

(2) A party fails to appear at the trial

(3) A plaintiff fails to timeously deliver a declaration

(4) A party fails to timeously request further particulars for purposes of trial (3)

QUESTION 5

Indicate the most accurate statement

(1) Only *viva voce* evidence may be given in open court

(2) A judgment can only be delivered at the end of the litigation process, in other words, at the end of a trial, because the court is only competent to deliver a judgment after hearing and properly considering the evidence

(3) If a party intends instituting an action and a document which forms a vital part of the claim is in the possession of a party who is to become the defendant in such an action, the prospective plaintiff can require the prospective defendant to make discovery thereof in terms of Uniform Rule 35

(4) An offer to settle in terms of Uniform Rule 34 can be used in both summons and application proceedings (3)

QUESTION 6

The plaintiff, A, claims payment from B in the amount of R500 000 in terms of an agreement in respect of which the defendant, B, would be liable for such payment should Z fail to pay this amount The plaintiff does not aver in the particulars of claim that Z failed to pay the amount The defendant may respond to this defect in the pleading in the following manner

(1) The defendant may apply for the setting aside of the pleading as an irregular proceeding in terms of Uniform Rule 30

(2) The defendant may raise an exception

(3) The defendant may deliver a special plea

(4) The defendant may apply for an amendment (3)

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QUESTION 7

Determine which of the following groups of procedures contain procedures that are **NOT** related to each other

(1) A request for further particulars for trial and interrogatories

(2) Attorney and client costs and costs *de bonis propriis*

(3) A subpoena and a writ

(4) An exception and amendment (3)

QUESTION 8

Indicate the statement which is the closest to correct

(1) If a defendant realises that an error has occurred in his notice of intention to defend, he can rectify such error in terms of the provisions for amendment contained in section 111(1) of the Magistrates' Court Act, 1944 and rule 55A of the magistrates' court rules

(2) A magistrate's court is competent to decide to subpoena a person as a witness if the court feels that such a witness would be able to contribute towards settling the action

(3) The discovery of documents in the magistrates' court is important because it allows a litigant to set down his or her case for trial

(4) The effect of an order for absolution of the instance is that the parties are placed in the same position as if the case had never been brought (3)

QUESTION 9

Indicate the most accurate statement

(1) If a claim in the magistrates' court is based on a liquid document, the plaintiff must attach that liquid document to the application for summary judgment

(2) The grounds for an application to strike out in the magistrates' court are more extensive than those grounds for which such application may be brought in the High Court

(3) The National Credit Act 34 of 2005 regulates consumer credit only in respect of goods sold and leased and credit granted

(4) A combined summons is preferred to the simple summons in claims brought in terms of the National Credit Act 34 of 2005 as the National Credit Act requires many averments to show compliance (3)

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QUESTION 10

Indicate the most accurate statement

(1) The proceedings of all courts and quasi-judicial bodies are subject to review

(2) A court hearing an appeal from a lower court, as in the case of a court of first instance, consists of a single judge

(3) A litigant who is dissatisfied with the outcome of a matter in a magistrate's court always has one appeal as of right

(4) An application for leave to appeal to the Supreme Court of Appeal must be lodged in duplicate with the Chief Justice (3)

(3 x 10) = [30]

SECTION B

PROCEDURE IN THE HIGH COURT

QUESTION 1

(a) C wishes to lodge an application to set aside irregular proceedings Briefly explain when the time period within which D must act in this regard commences (3)

(b) Discuss the contents of the affidavit by the plaintiff supporting his or her application for summary judgment as required by Uniform Rule 32(2) (3)

(c) Briefly explain the significance of the Constitutional Court judgment in *Gundwana v Steko Developments* 2010 3 SA 608 (CC) in relation to the execution of immovable property where default judgment is applied for in terms of Uniform Rule 31(5) (4)

[10]

QUESTION 2

Z wishes to issue summons against A for defamation Answer the following questions **Give reasons for your answers where indicated.**

(a) What type of summons would be appropriate in these circumstances? **Explain** (2)

(b) If A fails to give notice of intention to defend within the *dies induciae*, should Z deliver a notice of bar before applying for default judgment? **Explain fully** (2)

(c) If A gives notice of intention to defend within the *dies induciae*, may Z apply for summary judgment? **Explain fully** (2)

(d) Simply name the procedure that A may use if Z describes A in unsavoury terms and refers to his past drinking habits in the summons with which this action is instituted (1)

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SECTION A

MULTIPLE-CHOICE QUESTIONS

QUESTION 1

Indicate the most accurate statement

(1) If a dispute arises over whether a summons was served on a particular party, such dispute can be resolved by referring to the return of service of the sheriff

(2) Leaving a copy of a summons at the defendant's place of employment does not fulfil the stated requirements for ordinary service

(3) A combined summons is a unique document in the sense that the summons and the supporting statement are inextricably linked

(4) A notice of intention to defend is the first pleading which is exchanged between parties after service of the summons on the defendant (3)

QUESTION 2

The following are all examples of a "debt or liquidated demand"

Indicate the most accurate statement

(1) a claim for the delivery of ten selected and marked vehicles

(2) payment of an amount, being the apparent value of a piece of land

(3) a claim for payment for future maintenance

(4) a claim for a divorce order (3)

QUESTION 3

Indicate the most accurate statement

(1) A party who fails to timeously deliver a notice of intention to defend, is automatically barred

(2) A party who fails to timeously deliver a declaration and who despite having received a notice of bar, persists in such failure, is in default as well as barred

(3) To enable a defendant to deliver her plea on the merits, she can request further particulars from the plaintiff in terms of Uniform Rule 21(2)

(4) The main objective of the pre-trial conference in terms of Uniform Rule 37 is to facilitate a settlement between the parties (3)

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QUESTION 4

Indicate the most accurate statement

(1) In terms of Uniform Rule 35 a party is obliged to disclose correspondence exchanged "without prejudice"

(2) The *mandamenten van spolie* is an example of a mandatory interdict

(3) Failure by an advocate to sign the particulars of claim in the High Court causes the document to be defective, and enables the defendant to apply for the setting aside of such irregular proceedings

(4) Arbitration is an example of a plea in abatement because it seeks to destroy an action (3)

QUESTION 5

X hands over a cheque to Y as payment in terms of a contract The bank returns the cheque to Y, marked "refer to drawer" Y now wishes to institute action against X because of this Y can institute the action in the following manner

(1) by using only the provisional sentence summons

(2) by using only the simple summons

(3) by using the summary judgment procedure

(4) by using either the provisional sentence summons or the simple summons (3)

QUESTION 6

Indicate the most accurate statement

(1) Only two types of summonses are found in the magistrates' courts, namely the simple summons and the provisional sentence summons

(2) An application for an order for interim payment in terms of rule 18A of the Magistrates' Courts rules may not be brought before the expiry of the *dies induciae* for giving a notice of intention to defend

(3) Payment into court in terms of rule 18 of the Magistrates' Court rules, and tender, are methods for settling any claim in the magistrates' courts

(4) The magistrates' court is competent to decide to subpoena a person as a witness, if it is of the opinion that such a witness would be able to contribute towards settling the action (3)

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QUESTION 7

Indicate the most accurate statement

(1) Default judgments in the magistrates' courts must now be considered by registrars or clerks of the court in instances when such claims are based on an agreement governed by the National Credit Act 34 of 2005

(2) If a party fails to react to a request for discovery in the magistrates' court, the party making the request may compel compliance in terms of rule 23(8) of the rules of the magistrates' courts

(3) A power of attorney must be filed with the registrar or clerk of the court before a summons may be issued in the magistrates' court

(4) A party in the magistrates' court has the option of paying into court to ward off a summary judgment application (3)

QUESTION 8

Indicate the most accurate statement

(1) The automatic rent interdict is a separate type of summons used in the magistrates' court

(2) In the magistrates' court it is sufficient for a plaintiff to simply aver in a summons that in terms of section 28(1)(d) of the Magistrates' Courts Act, 1944 the whole cause of action arose within a specific court's jurisdiction area

(3) Discovery automatically takes place after close of pleadings in the magistrates' court

(4) The grounds for striking out in the magistrates' court are essentially the same as those that apply in the High Court (3)

QUESTION 9

Indicate the most accurate statement

(1) A party who is dissatisfied with the result of a trial may take the matter on review

(2) A court hearing an appeal from a lower court consists of two judges

(3) Only proceedings of lower courts and quasi-judicial bodies are subject to review

(4) A judgment of a High Court will always be enforced despite the noting of an appeal (3)

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QUESTION 10

Indicate the most accurate statement

(1) The heads of argument, as the name suggests, simply consists of the advocate's main points of argument to the court

(2) Both appeals and review proceedings are instituted by way of notice of motion

(3) If a magistrate allowed inadmissible evidence, the proceedings may be reviewed, and in some cases may be appealed against

(4) An appeal may be noted against interim orders, because the granting of such an order means that the party against whom it was given, lost the case (3)

(3 x 10)
[30]

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UNIVERSITY EXAMINATIONS

UNIVERSITEITSEKSAMENS

UNISA university of south africa

CIP3701 (468580) October/November 2012

CIVIL PROCEDURE: COURT PROCEEDINGS

Duration · 2 Hours

100 Marks

EXAMINERS :

FIRST	PROF F CASSIM MR MJ MATHENJWA	PROF E HURTER PROF OS SIBANDA
SECOND	PROF JA FARIS	

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SECTION A

MULTIPLE-CHOICE QUESTIONS

QUESTION 1

Indicate the most accurate statement

(1) Application proceedings may be instituted by way of the *ex parte* application, the "ordinary" application and the interlocutory application

(2) The three sets of affidavits which are usually exchanged between the parties in application proceedings are the supporting affidavit, the answering affidavit and the replication

(3) A power of attorney usually seeks to define the extent of an attorney's mandate

(4) Urgent applications are used when the relief sought is a preliminary step in the proceedings.

QUESTION 2

The following are all examples of a "debt or liquidated demand"

Indicate the most accurate statement

(1) a claim for the delivery of ten selected and marked vehicles

(2) payment of an amount, being the apparent value of a piece of land

(3) a claim for payment for future maintenance

(4) a claim for a divorce order

QUESTION 3

Determine which of the following groups of procedures are **not** related to each other.

Indicate the most accurate statement

(1) an *ex parte* application and a rule *nisi*

(2) the combined summons and the simple summons

(3) default judgment and summary dismissal

(4) a notice of motion and a declaration

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QUESTION 4

Indicate the most accurate statement

(1) In terms of Uniform Rule 35 a party is obliged to disclose correspondence exchanged "without prejudice"

(2) If a defendant fails timeously to give notice of intention to defend, the plaintiff must first give notice of bar before he or she may apply for default judgment against the defendant

(3) Failure by an advocate to sign the particulars of claim causes the document to be defective, and enables the defendant to apply for the setting aside of such irregular proceedings

(4) Arbitration is an example of a plea in abatement because it seeks to destroy an action

QUESTION 5

Indicate the most accurate statement

(1) To be defined as a liquid document, payment of the debt must be unconditional and must appear *ex facie* the document

(2) One of the rules for the drafting of processes is that only facts, and not the law, must be pleaded

(3) In the High Court, the amount tendered in settlement need only be available for payment and need not be paid into court

(4) The Uniform Rules of Court provide that the plaintiff has the sole responsibility to apply for the set-down of a matter.

QUESTION 6

Indicate the most accurate statement

In the High Courts the position is as follows:

(1) pleadings are deemed closed only after the plaintiff has filed his or her replication

(2) in reply to a defendant's counterclaim, a defendant in reconvention may file a replication in reconvention

(3) an exception may be lodged only against a declaration or particulars of claim.

(4) it is possible to inspect a clearly specified document or tape recording in a party's possession and relating to a reasonably anticipated issue in the action before the close of pleadings.

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QUESTION 7

Indicate the most accurate statement

(1) Default judgments in the magistrate's courts must now be considered by registrars or clerks of court in instances when such claims are based on an agreement governed by the National Credit Act 34 of 2005.

(2) The defendant in the magistrate's court has an option of paying into court to ward off a summary judgment application

(3) A party may request further particulars for purposes of pleading in terms of rule 16 of the magistrates' courts rules

(4) No provision is made in the magistrates' court rules for automatic discovery

QUESTION 8

Indicate the most accurate statement

(1) A cost order *de bonis propriis* is granted if a party to the action has been guilty of bad behaviour in conducting an action

(2) Some of the items of property exempt from execution in terms of section 67 of the Magistrates' Courts Act 32 of 1944 is "professional books, documents or instruments necessarily used by the debtor in his or her profession, in so far as the value of these items does not exceed R2 000"

(3) The National Credit Act 34 of 2005 requires a written notice by way of a summons to be properly served on the defendant

(4) The plaintiff's summons must contain a reference to section 26(1) of the Constitution in instances where he or she seeks an order for movable property to be declared executable in the magistrates' court.

QUESTION 9

Indicate the most accurate statement.

(1) A judgment of a High Court which was procured by fraud may be set aside only if it can be shown that the successful litigant was a party to such fraud

(2) The proceedings of all courts and quasi-judicial bodies are subject to review

(3) A litigant who is dissatisfied with the outcome of a matter always has one appeal as of right

(4) A court hearing an appeal from a lower court, as in the case of first instance, consists of a single judge

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QUESTION 10

Indicate the most accurate statement

(1) A High Court derives the power to review the proceedings of inferior courts from the Supreme Court Act 59 of 1959

(2) The Constitutional Court is the highest court of appeal in respect of all civil matters

(3) Lower court proceedings are reviewed by way of the summons procedure

(4) Both appeal and review must take place within a reasonable time

(3 x 10) = [30]

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UNIVERSITY EXAMINATIONS

UNIVERSITEITSEKSAMENS

UNISA university of south africa

CIV3701 (657106)

October/November 2020

Civil Procedure

Duration : 2 Hours

100 Marks

EXAMINERS :

FIRST : MS MP MOTHAPO ADV MB NDLAZI

SECOND : PROF E HURTER

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QUESTION 1

Indicate the most accurate statement:

(1) Only the Constitutional Court may adjudicate an alleged violation of a fundamental right entrenched under Chapter 2 of the Constitution, 1996.

(2) Disputes concerning the constitutional status, powers or functions between organs of state in the national or provincial spheres may be adjudicated upon only by the Constitutional Court.

(3) The Supreme Court of Appeal is competent to hear only non-constitutional matters.

(4) A magistrate's court is not competent to adjudicate upon the validity of any legislation, but may pronounce upon the validity of the exercise of executive powers by the President. (2)

QUESTION 2

Indicate the most accurate statement:

(1) An *incola* of a particular High Court is a person who is domiciled or resident in that court's area of jurisdiction, and he or she must be a South African citizen.

(2) The *forum rei sitae* will exercise jurisdiction over immovable property only following the attachment thereof.

(3) On the basis of the *actor sequitur forum rei* rule, a High Court may not exercise jurisdiction over a defendant unless the defendant is physically present within its area of jurisdiction.

(4) An application for attachment must be brought before the main action commences, and the applicant must show that, *prima facie*, he or she has a cause of action. (2)

QUESTION 3

Indicate the most accurate statement:

Determine in which of the following situations a High Court will be competent to exercise jurisdiction:

(1) The plaintiff is an *incola* of the court in which the cause of action arose and the defendant is an *incola* of the Republic.

(2) Both parties to the action are *peregrini* and the cause of action arose outside the court's jurisdictional area. The defendant submits to the jurisdiction of this court.

(3) A spouse who is domiciled in the United Kingdom may not independently institute proceedings in a South African High Court in which the other spouse is domiciled.

(4) A contract is concluded between X and Z in Bloemfontein for the sale of immovable property situated in Durban. X may institute proceedings against Z in the Free State High Court, Bloemfontein for registration of the property in his name. (2)

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QUESTION 4

Indicate the most accurate statement:

(1) A magistrate's court within whose area of jurisdiction a defendant resides is vested with jurisdiction solely by virtue of the common-law principle *actor sequitur forum rei*.

(2) A claim for delivery of specially marked and identified tables without an alternative claim for damages, cannot be instituted in any magistrate's court despite the fact that the value of the tables does not exceed R200 000.

(3) Splitting of claims occurs when more than one claim, each based on a separate cause of action, is contained in a single summons.

(4) If X abandons an amount of R30 000 in terms of section 38 of the Magistrates' Courts Act 32 of 1944, he cannot thereafter institute another action for the amount abandoned, despite having succeeded in proving his full claim. (2)

QUESTION 5

Indicate the most accurate statement:

(1) The discovery of documents in the magistrates' courts is important because it allows a litigant to set down his or her case for trial.

(2) A defendant may consent to judgment for a smaller amount than claimed in the summons, but he or she may then defend the action in respect of the balance of the claim.

(3) A party may request further particulars for the purpose of pleading in the magistrates' courts in terms of rule 16 of the Magistrates' Courts Rules.

(4) In terms of rule 21A of the Magistrates' Courts Rules, only the court may declare pleadings closed, and parties may not agree that pleadings have closed. (2)

QUESTION 6

Indicate the most accurate statement:

(1) The record of the case management conference, the minutes submitted by the parties, the directions of the case management judge and the record of any settlement discussion must be included in the court file and placed before the trial judge to enable the judge to consider issues of costs.

(2) When an attorney ceases to act for a party, the attorney must forthwith give notice to such party and to the opposing party by registered post, and thereafter notify the Registrar of the withdrawal.

(3) A defendant may apply for the rescission of a default judgment to the Registrar, and the Registrar must record all orders so rescinded.

(4) Civil matters to which judicial case management applies need not comply with the provisions of Uniform Rule 37 relating to pre-trial conferences. (2)

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QUESTION 7

Indicate the most accurate statement:

(1) If a dispute arises over whether a summons was served on a particular party, such dispute can be resolved by referring to the return of service of the sheriff.

(2) Leaving a copy of a summons at the defendant's place of employment does not fulfil the stated requirements for ordinary service.

(3) A combined summons is a unique document in the sense that the summons and the declaration are inextricably linked.

(4) A notice of intention to defend is the first pleading that is exchanged between parties after service of the summons on the defendant. (2)

QUESTION 8

Indicate the most accurate statement:

Summary judgment is relevant in the following circumstances:

(1) Where a claim is for breach of contract and the defendant gives notice of intention to defend simply to delay proceedings.

(2) Where the claim is for goods sold and delivered and the plaintiff contends that the defendant does not have a *bona fide* defence and that appearance to defend was simply entered to gain time.

(3) Where the claim is for payment of an amount of money owing under a loan agreement and the defendant delivers a plea on the merits.

(4) Where the claim is for specific performance and the defendant does not raise any issue for trial. (2)

QUESTION 9

Indicate the most accurate statement:

(1) An offer to settle in terms of Uniform Rule 34 can be used in both summons and application proceedings.

(2) A judgment can only be delivered at the end of a trial, because the court is only competent to deliver a judgment after hearing and properly considering the evidence.

(3) If a party intends instituting an action and a document which is vital in support of the claim is in the possession of a party who is to become the defendant in such an action, the prospective plaintiff may request the prospective defendant to make discovery thereof in terms of Uniform Rule 35.

(4) Only *viva voce* evidence may be given by a witness in open court. (2)

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QUESTION 10

Indicate the most accurate statement:

(1) Both appeal and review must take place within a reasonable time.

(2) The proceedings of all courts and quasi-judicial bodies are subject to review by the High Court in terms of the Superior Courts Act, 2013.

(3) A litigant who is dissatisfied with the outcome of a matter in the magistrates' court always has one appeal as of right.

(4) A High Court derives the power to review the proceedings of inferior courts from the Superior Courts Act, 2013. (2)

(10x2)

Total for Section A: [20]

SECTION B

INTRODUCTORY STUDIES

QUESTION 1

(a) Briefly **explain in general terms** in what respect has the Constitution, 1996 affected the Law of Civil Procedure in South Africa. (2)

(b) Briefly **explain** in what respects the small claims courts have been made more accessible and user-friendly to litigants than other courts. (3)

(c) Briefly **explain** the concepts of domicile and residence in the context of divorce jurisdiction. (5)

(e) Explain fully whether divorce proceedings may be instituted in a **district** or **regional** magistrate's court. (5)

[15]

HIGH COURT JURISDICTION AND PROCEDURE

QUESTION 2

(a) An action for damages for breach of contract that occurred in Johannesburg is instituted in the Johannesburg High Court. The plaintiff is an *incola* of the court, and the defendant is an American businessman resident and domiciled in America. The defendant owns a flat in Johannesburg. Answer the following questions and **give full reasons for your answers**.

(i) Will the plaintiff succeed with an application for the attachment of the defendant's property in the Johannesburg High Court? (5)

(ii) Would your answer to (i) above change if the defendant was no longer living or domiciled in America, but was a South African citizen permanently living in Cape Town? (6)

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UNIVERSITY EXAMINATIONS

UNIVERSITEITSEKSAMENS

UNISA university of south africa

CIV3701 (657106)

October/November 2020

Civil Procedure

Duration : 2 Hours

100 Marks

EXAMINERS :

FIRST : MS MP MOTHAPO ADV MB NDLAZI

SECOND : PROF E HURTER

CONFIDENTIAL

THIS PAPER CONSISTS OF 11 PAGES.

INSTRUCTIONS FOR A PORTFOLIO WITH ASSESSMENT INFO TOOL ON MYUNISA

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1. The examination question paper counts **100 marks.**

2. Answer **ALL** questions.

3. The duration of the examination is **2 hours**. Your portfolio opens **30 October 2020** at **12h30** and must be submitted via myUnisa on **30 October 2020** on or before **14h30** (Central African Time).

4. This is a **timed online examination**. You may not consult your prescribed study material during the examination. You may not consult anyone else and must submit your own work.

5. Your answer to this portfolio examination must be submitted online on *myUnisa*.

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5.2 Click on the "**myAdmin**" tab in the top navigation.

5.3 In the "**Assessments**" submenu, click on the "**Assessment Info**" tool in the drop-down list

- A list of all available assessments will display
- Locate the section for **UNISA summative assessments** at the bottom of the list
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Open Rubric

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QUESTION 1

Indicate the most accurate statement:

(1) Only the Constitutional Court may adjudicate an alleged violation of a fundamental right entrenched under Chapter 2 of the Constitution, 1996.

(2) Disputes concerning the constitutional status, powers or functions between organs of state in the national or provincial spheres may be adjudicated upon only by the Constitutional Court.

(3) The Supreme Court of Appeal is competent to hear only non-constitutional matters.

(4) A magistrate's court is not competent to adjudicate upon the validity of any legislation, but may pronounce upon the validity of the exercise of executive powers by the President. (2)

QUESTION 2

Indicate the most accurate statement:

(1) An *incola* of a particular High Court is a person who is domiciled or resident in that court's area of jurisdiction, and he or she must be a South African citizen.

(2) The *forum rei sitae* will exercise jurisdiction over immovable property only following the attachment thereof.

(3) On the basis of the *actor sequitur forum rei* rule, a High Court may not exercise jurisdiction over a defendant unless the defendant is physically present within its area of jurisdiction.

(4) An application for attachment must be brought before the main action commences, and the applicant must show that, *prima facie*, he or she has a cause of action. (2)

QUESTION 3

Indicate the most accurate statement:

Determine in which of the following situations a High Court will be competent to exercise jurisdiction:

(1) The plaintiff is an *incola* of the court in which the cause of action arose and the defendant is an *incola* of the Republic.

(2) Both parties to the action are *peregrini* and the cause of action arose outside the court's jurisdictional area. The defendant submits to the jurisdiction of this court.

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(1) An offer to settle in terms of Uniform Rule 34 can be used in both summons and application proceedings.

(2) A judgment can only be delivered at the end of a trial, because the court is only competent to deliver a judgment after hearing and properly considering the evidence.

(3) If a party intends instituting an action and a document which is vital in support of the claim is in the possession of a party who is to become the defendant in such an action, the prospective plaintiff may request the prospective defendant to make discovery thereof in terms of Uniform Rule 35.

(4) Only *viva voce* evidence may be given by a witness in open court. (2)

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QUESTION 10

Indicate the most accurate statement:

(1) Both appeal and review must take place within a reasonable time.

(2) The proceedings of all courts and quasi-judicial bodies are subject to review by the High Court in terms of the Superior Courts Act, 2013.

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1. Indicate the most accurate statement:

a.A rule nisi applies only to ex parte applications.

b.an affidavit in application proceedings may, as a rule, not contain hearsay evidence, and if it does, it may not on application be amended.

c.An interlocutory application is brought by way of a notice.

d.All types of application must be served by the sheriff.

2.C and D enter into a contract in Durban in terms of which C has to deliver goods to D's business premises in Bloemfontein. Despite demand C fails to deliver the goods. C lives in Pietermaritzburg and D lives in Johannesburg. D intends issuing summons against C for delivery of the goods. Indicate the statement which is the most accurate:

a.Only the magistrates' courts of Johannesburg and Pietermaritzburg will hear the matter.

b.Only the magistrates' courts of Durban and Pietermaritzburg will have jurisdiction to hear the matter.

c.Only the magistrates' courts of Durban, Pietermaritzburg and Bloemfontein will have jurisdiction to hear the matter.

d.Only the magistrate's court of Pietermaritzburg will have jurisdiction to hear the matter.

3.Indicate the most accurate statement:

a.A defendant may consent to judgment for a smaller amount than claimed in the summons, but he or she may then defend the action in respect of the balance of the claim.

b.The discovery of documents in the magistrates' courts is important because it allows a litigant to set down his or her case for trial.

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c.A party may request further particulars for purposes of pleading in the magistrates' courts in terms of rule 16 of the Magistrates' Courts Rules.

d.In terms of rule 21A of the Magistrates' Courts Rules, the court only may declare pleadings closed, and parties may not agree that pleadings have closed.

4. Indicate the most accurate statement. A High Court may exercise jurisdiction ad fundandam iurisdictionem if:

a.Both the plaintiff and the defendant are peregrini of the court concerned, and attachment has taken place.

b.The defendant is a peregrinus of the court concerned, but an incola of the Republic, provided that attachment has taken place.

c.The plaintiff is an incola of the court concerned and the defendant is a peregrinus of such court as well as of the Republic, in an instance where the cause of action did not arise within the area of jurisdiction of the court concerned, provided attachment has taken place.

d.Attachment has taken place in an instance where the defendant is a peregrinus of the court concerned and of the whole Republic, irrespective of whether the plaintiff is an incola or peregrinus of the court concerned, provided that the cause of action has arisen within the court's area of jurisdiction.

5.. Indicate the most accurate statement:

a.A court may exercise divorce jurisdiction only if both or either of the parties are/is domiciled in the Republic on the date on which the action is instituted.

b.A court may exercise divorce jurisdiction only if both or either of the parties are/is resident in its area of jurisdiction on the date on which the action is instituted and has/have been ordinarily resident in the Republic for a period of not less than one year immediately prior to the institution of the action.

c.A court may exercise divorce jurisdiction if both or either of the parties are/is ordinarily

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resident in its area of jurisdiction on the date on which the action is instituted and has/have been ordinarily resident in the Republic for a period of not less than one year immediately prior to the institution of the action.

d.A court may exercise divorce jurisdiction if both or either of the parties are/is domiciled in the Republic on the date on which the action is instituted and the parties are/is resident in its area of jurisdiction on the date on which the action is instituted and has/have been ordinarily resident in the Republic for a period of less than one year immediately prior to the institution of the marriage.

6.Indicate the most accurate statement:

a.The Supreme Court of Appeal is competent to hear only non-constitutional matters.

b.Only the Constitutional Court may adjudicate on any alleged violation of a fundamental right entrenched under Chapter 2 of the Constitution, 1996.

c.Disputes concerning the constitutional status, powers or functions between organs of state in the national or provincial spheres may only be adjudicated by the Constitutional Court.

d.A magistrate's court is not competent to adjudicate upon the validity of any legislation but may pronounce upon the validity of the exercise of executive powers by the President.

7.Indicate the most accurate statement:

a.An offer to settle in terms of Uniform Rule 34 can be used in both summons and application proceedings.

b.A judgment can only be delivered at the end of a trial, because the court is only competent to deliver a judgment after hearing and properly considering the evidence.

c.If a party intends instituting an action and a document which is vital in support of the claim is in the possession of a party who is to become the defendant in such an action, the prospective plaintiff may request the prospective defendant to make discovery thereof in terms of Uniform Rule 35.

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d.Only viva voce evidence may be given by a witness in open court.

8.Indicate the most accurate statement:

a.A combined summons is a unique document because the summons and the declaration are inextricably linked.

b.In action proceedings, a counterclaim is always served with aa plea on the merits.

c.As an attorney, it is not possible to represent the client without first producing a power of attorney in all courts.

d.A power of attorney usually seeks to define the extent of an attorney's mandate.

9. Indicate the most accurate statement:

a.A litigant who is dissatisfied with the outcome of a matter, always has one appeal as of right.

b.A court hearing an appeal from a lower court, as in the case of a court of first instance, consists of a single judge.

c.The Constitutional Court is the highest court of appeal in respect of all civil matters.

d.An appeal from a magistrates' court may only be noted against a decision which is final in effect.

10. Indicate the most accurate statement:

a.Small claims courts have inferior status because the amount of the claim is so low.

b.The principle of party presentation applies in the small claims court because the commissioner plays an active role in assisting the litigants to present their case during the trial.

c.In small claims courts a party is entitled to cross-examine his or her opponent.

d.A small claims court may entertain an action for the delivery of movable property not exceeding R20 000.

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1.Indicate the most accurate statement.

a. Small claims courts have an inferior status because they are not courts of record.

b. A juristictic person may only commence proceedings in a small claims court when represented by a duly authorised director or other natural person.

c. **Although the rules of evidence do not apply in the small claims courts, a plaintiff may call one or more witnesses to prove his claim**.

d. A small claims court is competent to grant an interdict.

2. Indicate the most accurate statement:

a. The Constitutional Court is the highest court of appeal in respect of all civil matters.

b. A litigant who is dissatisfied with the outcome of a matter, always has one appeal as of right.

c. A court hearing an appeal from a lower court, as in the case of a court of first instance, consists of a single judge.

d. An appeal from a magistrates court may only be noted against a decision which is final in

4.Indicate the most accurate statement:

a. Section 2(1) of the Divorce Act, 1979 read with section 1(1) of the Domicile Act, 1992 provides that a court may exercise jurisdiction only if the wife is domiciled and resident in the area of jurisdiction of a High Court on the date when the action is instituted.

b. The Roman-law rule actor sequitur forum rel means that the plaintiff must institute action against the defendant in the High Court within whose area of jurisdiction the defendant is a citizen.

c. The High Court in whose area of jurisdiction immovable property is situated, has exclusive Jurisdiction in an action for the delivery of such property.

d. A High Court will accept submission to its jurisdiction in regard to a claim sounding in money if both parties to the action are foreign peregrini and the cause of action occurred outside the particular courts area of jurisdiction.

5.Indicate the most accurate statement:

a. **Since the rules exist for the courts, a court may condone a litigants non-compliance with its rules.**

b. The Uniform Rules of Court are a common set of rules that uniformly regulate the

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conduct of proceedings in the magistrates courts.

c. The South African High Courts are creatures of statute because they are subject to the provisions of the Superior Courts Act, 2013.

d. The Minister of Justice and the Rules Board may make rules relating to the manner in which the Constitutional Court may be engaged.

6. **Indicate the most accurate statement:**

a. Unlike the Supreme Court of Appeal, the Constitutional Court may never be approached directly.

b. A magistrate's court is not competent to adjudicate upon the validity of any legislation, but may pronounce upon the validity of the exercise of executive powers by the President.

c. The Supreme Court of Appeal is competent to hear only non constitutional matters.

d. Disputes concerning the constitutional status, powers or functions between organs of state in the national or provincial spheres may only be adjudicated by the Constitutional Court.

7.Indicate the most accurate staterent:

a. The heads of argument, as the name suggests, simply consists of the advocates main points of argument to the court

b. Both appeals and review proceedings are instituted by way of notice of motion. © c

c. Only proceedings of lower courts and quasi-judicial bodies are subject to review.

d. A party who is dissatisfied with the result of a trial may take the matter on review.

8. Indicate the most accurate statement. Determine which of the following groups of procedures are not related to parentines

a. An ex parte application and a rule nisi.

b. Default judgment and summary judgment.

c. A notice of motion and a replication.

d. An exception and a special plea.

9. Indicate the most accurate statement. Bar is relevant in the following circumstances:

a. The defendant does not timeously give notice of his intention to defend.

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b. A party fails to appear at the trial.

c. A party falis to timeously request further particulars for the purposes of trial.

d. A party fails to timeously deliver a declaration.

10. Indicate the most accurate statement.

a. Small claims courts have an inferior status because they are not courts of record.

b. A furistic person may only commence proceedings in a small claims court when represented by a duly authorised director or other natural person.

c. Although the rules of evidence do not apply in the small claims courts, a plaintiff may call one or more witnesses to prove his claim.

d. A small claims court is competent to grant an interdict.

11. indicate the most accurete statement.

a. The three sets of affidavits which are usually exchanged between the parties in application proceedings are the founding affidavit, the answering affidavit and the rejoinder.

b. An ordinary application is always brought when one of the parents after a divorce applies for an amendment of access rights in respect of minor children.

c. If a party wishes to oppose an application, he or she must deliver a plea within the dies induciae.

d. Ordinary application proceedings must be commenced on notice.

12. Indicate the most accurate staterment:

a. A party who is dissatisfied with the result of a trial may take the matter on review

b. The heads of argument, as the name suggests, simply consists of the advocates main points of argument to the court.

c. **Only proceedings of lower courts and quasi-judicial bodies are subject to rev**iew.

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c. a bank to is to uneoust recuest tunner portculars torte purposes or kilal.

d. **A party fails to timeously deliver a declaration**

14. Indicate the most accurate statement

a. The objective of allowing security for costs is to limit access 10 court to unsuitable litigants, such as vexatious litigants and foreign peregrini

b. The effect of an order for absolution of the instance is that parties are placed in the same cosition as it the case has never been brought

c. Service by substituted service is effected overseas by an officer of the foreign court whose functions are similar of those of the sheriff of a South African Court

d. Arbitration is an example of a plead in an absolution of the instance is that parties are placed in the same position as if the case has never been brought

15. Indicate the most accurate statement. In the High Court the position is as follows:

a. Pleadings are deemed closed only after the plaintiff has filed his or her replication.

b. In reply to a defendants counterclaim, a defendant in reconvention may file a replication in reconvention.

c. An exception may be raised only against a declaration or the particulars of claim.

d. It is possible to inspect a clearly specified document or tape recording in a party possession and relating to a reasonably anticipated issue in the action before the close of pleadings.

16. ndicate the statement which is the most ACCURATE:

a. Small claims courts have inferior status because the amount of the claim is so low.

b. The principle of party presentation does not apply in the small claims court because the commissioner plays an active role in assisting the litigants to represent their case during the trial.

c. A small claims court can adjudicate a claim for wrongful imprisonment or for wrongful arrest.

d. A small claims court can entertain an action for the delivery of movable property exceeding the value of R20 000.

17.ndicate the statement which is closest to CORRECT. A submission to the jurisdiction of a High Court occurs when:

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a. Both parties to the action are foreign peregrini and the cause of action has occurred outside the court's area of jurisdiction.

b. Both parties to the action are incola of the court concerned.

c. The plaintiff is an incola of the court concerned and the defendant is an incola of another South African Court, the cause of action has occurred outside the court's area of jurisdiction.

d. **The plaintiff is a local peregrinus and the defendant is a foreign peregrinus and the cause of action has occurred within the court's area of jurisdiction**.

18. Indicate the most accurate statement. A court has a wide discretion when awarding costs after passing judgment. This statement implies the following:

a. A party who loses a case will be ordered to pay the winners costs.

b. A party who wilfully destroys documents beneficial to his opponents case, may be ordered to pay costs de bonis propriis.

c. A party who continues to defend a matter during trial despite knowing that he or she is liable for payment of the full amount claimed, may be ordered to pay attorney-and client costs.

d. A party may be awarded party-and-party costs if the court is of the opinion that it is unreasonable to deprive such a party of costs reasonably incurred before issue of summons

19. Indicate the statement which is closest to CORRECT. A submission to the jurisdiction of a High Court occurs when:

a. Both parties to the action are foreign peregrini and the cause of action has occurred outside the court's area of jurisdiction.

b. Both parties to the action are incola of the court concerned.

c. The plaintiff is an incola of the court concerned and the defendant is an incola of another South African Court, the cause of action has occurred outside the court's area of jurisdiction.

d. **The plaintiff is a local peregrinus and the defendant is a foreign peregrinus and the cause of action has occurred within the court's area of jurisdictio**n

20. Indicate the most accurate statement:

a. The heads of argument, as the name suggests, simply consists of the advocates main points of argument to the court.

b. Both appeals and review proceedings are instituted by way of notice of motion.

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c. A party who is dissatisfied with the result of a trial may take the matter on review.

d. Only proceedings of lower courts and quasi-judicial bodies are subject to review.

21. Indicate the most accurate statement:

a. The basic rule for drafting of pleadings is that the material facts upon which the claim or defence is based must be fully pleaded. Evidence is thus also pleaded.

b. A notice of intention to defend is the first pleading delivered by a defendant who wishes to defend an action.

c. Whether an action is instituted by way of a combined or a simple summons, the prescribed dies induciae for the delivery of a plea (with or without a counterclaim) is the same

d. In the High Court, pleadings are deemed to be closed as soon as the plaintiff has delivered a replication.

22. Indicate the most accurate statement:

a. When a claim for damages is instituted, the plaintiff must prove the guilt of the defendant.
b. In civil proceedings, the parties comprise the complainant and the defendant.
c. In civil proceedings, judgment will be granted in favour of the plaintiff if the defence raised by the defendant is less probable than the claim proved by the plaintiff.
d. As in the case of a superior court, a magistrates' court has discretion regarding its own procedure.

Assignment 2023

1. D who lives in Gauteng wishes to divorce her husband F. F lives in a caravan and drifts around the KwaZulu-Natal south coast where he works as a handyman, doing repairs to holiday homes.D does not know his exact whereabouts. The summons must be served on F by way of:

a. A combination of substituted service and edictal citation.
b. Normal service.
c. Substituted service.
d. Edictal citation.

2. Indicate the most accurate statement with regards to Constitutional Court jurisdiction:

a. The decisions on or President has failed to comply with a constitutional duty may be adjudicated by the Constitutional Court.

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b. The Constitutional Court may never be approached directly.
c. The Constitutional Court has concurrent jurisdiction with the Supreme Court of Appeal Court.
d. The constitutional court may not confirm a decision regarding the constitutionality of any legislation of the High Court before such legislation can acquire force.

3. Indicate the most accurate statement:

a. The Minister of Justice and the Rules Board may make rules relating to the manner in which the Constitutional Court may be engaged.
b. The South African High Courts are creatures of statute because they are subject to the provisions of the Superior Courts Act, 2013.
c. The Uniform Rules of Court are a common set of rules that uniformly regulate the conduct of proceedings in the magistrates courts.
d. Since the rules exist for the courts, a court may condone a litigans non compliance with its rules.

4.Indicate the most accurate statement:

a. The ratione rei gestae applies when a court in whose area of jurisdictio nproperty or a person is situated/resident, has exclusive jurisdiction over that property or person.
b. On the basis of the ground ratione domicilli, a High Court may not exercise jurisdiction unless the defendant is physically present within its area of jurisdiction.
c. An application for attachment must be brought before the main action commences, and the applicant must show that, prima facie, he or she has a cause of action.
d. The Roman-law rule actor sequitur……..

5. Indicate the most accurate statement:

a. A court may exercise divorce jurisdiction only if the wife is domiciled in the courts area of jurisdiction at the time of the institution of the action.
b. A court may exercise divorce jurisdiction only if the wife is resident in the jurisdictional area of the same court where the husband is resident.
c. The district magistrates courts can adjudicate on divorce matters according to the jurisdiction of the Regional Magistrates Courts Amendment Act.
d. Section 28(1A) of the Magistrates Courts Act provides the regional magistrates courts with divorce jurisdiction.

6. Indicate the most accurate statement:

a. Only viva voce evidence may be given by a witness in open court.
b. An offer to settle in terms of Uniform Rule 34 can be used in both summons and application proceedings.
c. If a party intends instituting an action and a document which is vital in support of the

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claim is in the possession of a party who is to become the defendant in such an action, the prospective plaintiff may request the prospective defendant to make discovery thereof in terms of Uniform Rule 35.

d. A judgment can only be delivered at the end of a trial, because the court is only competent to deliver a judgment ……

7. Indicate the most accurate statement:

a. An interlocutory application is brought by way of a notice.
b. All types of application must be served by the sheriff.
c. An affidavit in application proceedings may, as a rule, not contain hearsay evidence, and if it does, it may not on application be amended.
d. A rule nisi applies only to ex parte applications.

8.Indicate the most accurate statement:

a. The failure by an advocate to sign the particulars of a claim renders the document defective and th edefendant may raise a special plea to rectify the defect.
b. A party may lawfully in terms of Uniform Rule 35 refuse to disclose correspondence exchanged without prejudice.
c. It is an accepted rule that offer to settle in terms of Rule 34 and a tender may not be disclosed in court before judgment has been given.
d. Where a temporary interdict is sought, the court is approached by way of the summons procedure.

9.Indicate the most accurate statement:

a. An appeal from a magistrates court may only be noted against a decision which is final in effect.
b. A court hearing an appeal from a lower court, as in the case of a court of first instance, consists of a single judge.
c. A litigant who is dissatisfied with the outcome of a matter, always has one appeal as of right.
d. The Constitutional Court is the highest court of appeal in respect of all civil matters.

10. Indicate the most accurate statement. A High Court may exercise jurisdiction to obtain an order for:

a. Attachment ad fundandam iurisdictionem if the plaintiff is an incola of the court concerned, the defendant is a peregrinus of th eRepublic, the cause of action took place outside the jurisdictional area of the court concerned, and attachment has taken place.
b. Attachment ad fundandam iurisdictionem if the plaintiff is a peregrinus of the court concerned, the defendant is a peregrinus of the whole Republic, the cause of action

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occurred within the area of jurisdiction of the court concerned, and attachment has taken place within the jurisdictional area of th ecourt.

c. Attachment ad confirmandam iurisdictionem if both the plaintiff and the defendant are incolae of the court concerned and attachment has taken place.
d. Attachment ad confirmandam iurisdictionem if the defendant is a peregrinus of the court concerned, the plaintiff is an incola of the court concerned, and attachment has taken place.

12. Indicate the most accurate statement. In the High Court the position is as follows:

a. Pleadings are deemed closed only after the plaintiff has filed his or her replication.
b. In reply to a defendants counterclaim, a defendant in reconvention may file a replication in reconvention.
c. An exception may be raised only against a declaration or the particulars of claim.
d. It is possible to inspect a clearly specified document or tape recording in a party possession and relating to a reasonably anticipated issue in the action before the close of pleadings.

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